159 U.S. 695

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 558.

JOHN ANSBRO, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED MARCH 15, 1895.

(15,829.)

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, in the United States of America, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between John Ansbro, plaintiff in error, and The United States of America, defendant in error, a manifest error hath happened, to the great damage of the said John Ansbro, plaintiff in error, as is said and appears by his complaint, we, being willing that such error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the judges of the Supreme Court of the United States, at the city of Washington, together with this writ, so that you have the same at the said place, before the judges aforesaid, on the 14th day of March, 1895, that, the record and proceedings aforesaid being inspected, the said judges of the Supreme Court of the United States may cause further to be done therein to correct that error what of right and according to law and custom of the United States ought to be done.

2 Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 14th day of February, in the year of our Lord one thousand eight hundred and ninety-five, and of the Independence of the United States the one hundred and nineteenth.

JOHN A. SHIELDS,
Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

The foregoing writ is hereby allowed.

E. HENRY LACOMBE,
U. S. Circuit Judge.

3 UNITED STATES OF AMERICA, *Southern District of New York,* } *ss:*

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from five (5) to one hundred and fourteen (114), inclusive, contain a true and complete transcript of the record and proceedings had in said court in the cause of John Ansbro, plaintiff in error, against The United States, defendant in error, as the same remain- of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this fourteenth day of March, in the year of our Lord one thousand eight hundred and ninety-five, and of the Independence of the United States the one hundred and nineteenth.

Seal of U. S. Circuit Court, South. Dist. New York.

JOHN A. SHIELDS, *Clerk.*

4 [Endorsed:] E. & A. B. 1321. Supreme Court of the U. S. The United States of America *vs.* John Ansbro. Writ of error. Foley & Wray, attorneys for pl'ff in error, 63 Wall street, New York city. Due service this day of a copy of the within is admitted. Dated N. Y., Feb. 15th, 1895. Wallace Macfarlane, U. S. attorney.

[Stamped:] U. S. circuit court. Filed Feb. 15, 1895. John A. Shields, clerk.

5 Circuit Court of the United States, Southern District of New York.

TUESDAY, *October 9th*, 1894.

Present: Hon. Charles L. Benedict, judge.

The grand jury come into court and, being called, they severally answer to their names, and present to the court the following indictment:

THE UNITED STATES *vs.* JOHN ANSBRO. } Illegal Dumping in Harbor of New York City. Violation of the Act of June 29, 1888.

Ordered on file.

6 Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, begun and held in the city of New York, within and for the district and circuit aforesaid, on the third Wednesday of June, in the year of our Lord one thousand eight hundred and ninety-four, and continued by adjournment to and including the ninth day of October, in the year of our Lord one thousand eight hundred and ninety-four.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The jurors of the United States of America within and for the district and circuit aforesaid on their oath do present that the Congress of the United States of America did on or about the 29th day of June, 1888, pass a certain bill entitled "An act to prevent obstructive and injurious deposits within the harbor and adjacent waters of New York city by dumping or otherwise, and to punish

and prevent such offenses," which said bill the President of the said United States did approve on the 29th day of June, 1888, and thereupon said bill became a law of the United States; that by the provisions of said law, among other things, the placing, discharging, or depositing by any process or in any manner of refuse, dirt, ashes,
cinders, mud, sand, dredging, sludge, acid, or any other mat-
7 ter of any kind other than that flowing from streets, sewers,
and passing therefrom in a liquid state in the tidal waters of the harbor of New York or its adjacent or tributary waters, within the limits which shall be prescribed by the supervisor of the harbor, is thereby strictly forbidden.

And the jurors aforesaid do further present that by the provisions of said law it is provided, among other things, that a line officer of the United States Navy should be designated by the President of the United States as supervisor of the said harbor of New York, said supervisor of said harbor to act under the direction of the Secretary of War in enforcing the provisions of the said act of the Congress.

And the jurors aforesaid do further present that the President of the said United States did after his approval of said act of the Congress as aforesaid designate a line officer of the navy as such supervisor of the harbor of New York.

And the jurors aforesaid do further present that the said line officer of the navy so designated as such supervisor did thereupon, and before the commission of the unlawful acts hereinafter alleged to have been done by one John Ansbro, prescribe certain limits in said harbor of New York and its adjacent and tributary waters within which the placing, discharging, or depositing by any process or in any manner of refuse, dirt, ashes, cinders, mud, sand, dredgings, sludge, acid, cellar dirt, and other matter other than that flowing from streets, sewers, and passing therefrom in a liquid
8 state in the tidal waters of the harbor of New York or into
the adjacent or tributary waters thereof should be forbidden, and did establish a certain mark or buoy known as the "Mud buoy," which is a white spar buoy one and a half miles south of Coney island and located as follows: Ranges—North side Swinburne island and New Dorp beacon in range; Romer beacon and Point Comfort beacon in range. Bearings—Centennial tower bearing N. N. W.; Romer bearing S. W. by W. ½ W., magnetic; and did prescribe and define as the place where the matter hereinafter described as having been unlawfully deposited by said John Ansbro must be discharged or deposited and within which such discharge or deposit was forbidden as "south and east and within a half a mile of said Mud buoy," of all which matters and things the said John Ansbro had due notice before the commission of the wrongful acts done and performed by the said John Ansbro hereinafter set forth and complained of.

And the jurors aforesaid do further present that heretofore, to wit, on the first day of May, in the year of our Lord one thousand eight hundred and ninety-four, within the admiralty jurisdiction of the United States and within the jurisdiction of this court, in the south-

ern district of New York, one John Ansbro, being then and there the master of a certain vessel commonly called a steamtug and named "P. H. Wise," and which said steamtug "P. H. Wise" was knowingly engaged, used, and employed by the said John Ansbro, the master thereof, in towing from Bay Ridge channel, in said harbor of New York, through the Narrows and Lower bay, in said
9 harbor, to the "Mud buoy" theretofore designated by the said supervisor of the harbor of New York, two certain scows or *numbers*, known as numbers 38 and 45, which said scows or dumpers then and there contained a large quantity of mud and other matter, a more particular description of which is to the jurors aforesaid unknown, other than that flowing from streets and sewers and passing therefrom in a liquid state; the said mud and other matter as aforesaid was then and there unlawfully and knowingly dumped, placed, discharged, and deposited into the tidal waters of the harbor of New York and its adjacent and tributary waters from said two scows or dumpers by direction of the said John Ansbro, as such master of said vessel commonly called a steamtug and named "P. H. Wise," and which said steamtug "P. H. Wise" was then and there being used and employed by the said John Ansbro as the master thereof as aforesaid.

And the jurors aforesaid do further present that the place where the said mud and other matter was so dumped, placed, discharged and deposited as aforesaid was a point and place within the limits prescribed by the supervisor of the harbor of New York, as hereinbefore particularly described, as the limits within which the deposit of said mud and other matter was forbidden and was not a point south and east and within a half a mile of said mud buoy, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided—that is to say, in violation of the provisions of the act of Congress approved June 29th, 1888, entitled "An act to prevent obstructive and injurious deposits within the harbor and adja-
10 cent waters of New York city by dumping or otherwise and to punish and prevent such offenses," and the rules and regulations made and prescribed by the supervisor of the harbor of New York pursuant to said act of Congress and the amendments thereto.

11 *Second Count.*

And the jurors aforesaid on their oath aforesaid do further present that the Congress of the United States of America did on or about the 29th day of June, 1888, pass a certain bill entitled "An act to prevent obstructive and injurious deposits within the harbor and adjacent waters of New York city by dumping or otherwise and to punish and prevent such offenses," which said bill the President of the said United States of America did approve on the 29th day of June, 1888, and thereupon said bill became a law of the United States; that by the provisions of said law, among other things, the placing, discharging, or depositing by any process or in

any manner of refuse, dirt, ashes, cinders, mud, sand, dredgings, sludge, acid, or any other matter of any kind other than that flowing from streets, sewers, and passing therefrom in a liquid state in the tidal waters of the harbor of New York or its adjacent or tributary waters, within the limits which shall be prescribed by the supervisor of the said harbor, is thereby strictly forbidden.

And the jurors aforesaid do further present that by the provisions of said law it is further provided, among other things, that a line officer of the United States Navy should be designated by the President of the United States as supervisor of the said harbor of New York, said supervisor of said harbor to act under the direction of the Secretary of War in enforcing the provisions of the said act of the Congress.

12 And the jurors aforesaid do further present that the President of the said United States did, after his approval of said act of Congress as aforesaid, designate a line officer of the navy as such supervisor of said harbor of New York.

And the jurors aforesaid do further present that it is provided also in said act that in all cases of receiving on board of any scows or boats the forbidden matter or substance hereinbefore described it shall be the duty of the owner or master or person acting in such capacity on board of such scow or boat before proceeding to take or tow the same to the place of deposit to apply for and obtain from the supervisor of the harbor appointed thereunder a permit defining the precise limits within which the discharge of such scows or boats may be made, and any deviation from such dumping or discharging place specified in such permit shall, it is in said act provided, be a misdemeanor within the meaning of said act.

And the jurors aforesaid do further present that on or about the first day of May, 1894, the owners of the scows or boats hereinafter mentioned before proceeding to take or tow the same to the place of deposit applied for and obtained from the said supervisor of the harbor appointed as aforesaid a permit for the steamer P. H. Wise defining the precise limits within which the discharge of such scows or boats might be made, which said dumping or discharging place specified in said permit was as follows: South and east and within half a mile of what is known as the Mud buoy, which is a

13 white spar buoy one and one-half miles south of Coney island and located as follows:

Ranges. { North Swineburne island and New Dorp beacon in range.
Romer beacon and Point Comfort beacon in range.

Bearings. { Centennial tower bearing N. N. W.
Romer beacon bearing S. W. by W. $\frac{3}{4}$ W. } Magnetic.

of all which matters and things the said John Ansbro had due notice before the commission of the wrongful acts done and performed by the said John Ansbro hereinafter set forth and complained of.

And the jurors aforesaid do further present that heretofore, to

wit, on the first day of May, A. D. 1894, the said John Ansbro was the master of a certain steam vessel, to wit, the aforesaid steamer named P. H. Wise, of New York, and upon the day last aforesaid the said John Ansbro, as such master as aforesaid, received from the supervisor of the harbor of New York the permit aforesaid permitting the said steam vessel P. H. Wise, of New York, to pass with two certain scows, boats, or dumpers known as Nos. 38 and 45, which said boats, scows, or dumpers then and there contained a large quantity of mud and other matter, a more particular description of which is to the jurors aforesaid unknown, other than that flowing from streets and sewers and passing therefrom in the liquid state, from Bay Ridge channel through the Narrows and Lower bay to the "Mud buoy" hereinbefore mentioned, and there south and east and within half a mile of said Mud buoy to deposit the said mud and other matter contained in said scows or dumpers.

14 And the jurors aforesaid do further present that heretofore, to wit, on the first day of May, in the year of our Lord one thousand eight hundred and ninety-four, within the admiralty jurisdiction of the United States and within the jurisdiction of this court, in the southern district of New York, the aforesaid John Ansbro being then and there the master of the said steam vessel P. H. Wise, of New York, and which said steam vessel P. H. Wise was knowingly engaged, used, and employed by the said John Ansbro, he being the master thereof and having the said permit from the said supervisor of the harbor of New York to tow said two scows or dumpers Nos. 38 and 45, with their contents, from Bay Ridge channel, in said harbor of New York, through the Narrows and Lower bay to the said "Mud buoy" theretofore designated by the said supervisor of the harbor of New York, and within said scows or dumpers then and there contained a large quantity of mud and other matter, a more particular description of which is to the jurors aforesaid unknown, other than that flowing from streets and sewers and passing therefrom in a liquid state, the said mud and other matter as aforesaid was then and there unlawfully and knowingly dumped, placed, discharged, and deposited into the tidal waters of the harbor of New York and its adjacent and tributary waters from said two scows or dumpers by direction of the said John Ansbro, as such master of said steam vessel P. H. Wise, of New York, and which said steam vessel P. H. Wise was then and there being used and employed by the said John Ansbro, as the master thereof as aforesaid.

15 And the jurors aforesaid do further present that the place where the said mud and other matter were so dumped, placed, discharged, and deposited as aforesaid was not at the dumping or discharging place specified in said permit so as aforesaid granted to the said vessel, but deviated therefrom, as he, the said John Ansbro, then and there well knew, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided—that is to say, in violation of the provisions of the said act of Congress

approved June 29th, 1888, entitled "An act to prevent obstructive and injurious deposits within the harbor and adjacent waters of New York city by dumping or otherwise, and to punish and prevent such offences," and the rules and regulations made and prescribed by the supervisor of the harbor of New York pursuant to said act of Congress and the amendments to said act of Congress.

16 *Third Count.*

And the jurors aforesaid on their oaths aforesaid do further present that the Congress of the United States of America did on or about the 29th day of June, 1888, pass a certain bill entitled "An act to prevent obstructive and injurious deposits within the harbor and adjacent waters of New York city by dumping or otherwise, and to punish and prevent such offences," which said bill the President of the said United States did approve on the 29th day of June, 1888, and thereupon said bill became a law of the United States; that by the provisions of said law, among other things, the placing, discharging, or depositing by any process or in any manner of refuse, dirt, ashes, cinders, mud, sand, dredging, sludge, acid, or any other matter of any kind other than that flowing from streets, sewers, and passing therefrom in a liquid state in the tidal waters of the harbor of New York or its adjacent or tributary waters within the limits which shall be prescribed by the supervisor of the harbor is thereby strictly forbidden.

And the jurors aforesaid do further present that by the provisions of said law it is provided, among other things, that a line officer of the United States Navy should be designated by the president of the United States as supervisor of the said harbor of New York, said supervisor of said harbor to act under the direction of the Secretary of War in enforcing the provisions of the said act of the Congress.

17 And the jurors aforesaid do further present that the President of the said United States did, after his approval of said act of the Congress as aforesaid, designate a line officer of the navy as such supervisor of the harbor of New York.

And the jurors aforesaid do further present that the said line officer of the navy so designated as such supervisor did thereupon, and before the commission of the unlawful acts hereinafter alleged to have been done by one John Ansbro, prescribe certain limits in said harbor of New York and its adjacent and tributary waters within which the placing, discharging, or depositing by any process or in any manner of refuse, dirt, ashes, cinders, mud, sand, dredgings, sludge, acid, cellar dirt, and other matter other than that flowing from streets, sewers, and passing therefrom in a liquid state in the tidal waters of the harbor of New York or into the adjacent or tributary waters thereof should be forbidden, and did establish a certain mark or buoy known as the "Mud buoy," which is a white spar buoy one and a half miles south of Coney island and located as follows: Ranges—North side Swinburne island and New Dorp beacon in range; Romer beacon and Point Comfort beacon in

range. Bearings—Centennial tower bearing N. N. W.; Romer bearing S. W. by W. ¾ W., magnetic; and did prescribe and define as the place where the matter hereinafter described as having been unlawfully deposited by said John Ansbro must be discharged or deposited and within which such discharge or deposit was forbidden as "south and east and within a half a mile of said Mud buoy," of all which matters and things the said John Ansbro
18 had due notice before the commission of the wrongful acts done and performed by the said John Ansbro hereinafter set forth and complained of.

And the jurors aforesaid do further present that heretofore, to wit, on the fifteenth day of August, in the year of our Lord one thousand eight hundred and ninety-four, within the admiralty jurisdiction of the United States and within the jurisdiction of this court, in the southern district of New York, one John Ansbro, being then and there the master of a certain vessel commonly called a steamtug and named "Stephen Decatur," and which said steamtug "Stephen Decatur" was knowingly engaged and employed by the said John Ansbro, the master thereof, in towing from Red Hook channel, in said harbor of New York, through the Narrows and Lower bay, in said harbor, to the "Mud buoy" theretofore designated by the said supervisor of the harbor of New York, four certain scows or dumpers, known as numbers 4, 37, 39, 43, which said scows or dumpers then and there contained a large quantity of mud and other matter, a more particular description of which is to the jurors aforesaid unknown, other than that flowing from streets and sewers and passing therefrom in a liquid state; the said mud and other matter as aforesaid was then and there unlawfully and knowingly dumped, placed, discharged, and deposited into the tidal waters of the harbor of New York and its adjacent and tributary waters from said four scows or dumpers by direction of the said John Ansbro, as such master of said vessel commonly called
19 a steamtug and named "Stephen Decatur," and which said steamtug "Stephen Decatur" was then and there being used and employed by the said John Ansbro as the master thereof as aforesaid.

And the jurors aforesaid do further present that the place where the said mud and other matter *was* so dumped, placed, discharged, and deposited as aforesaid was a point and place within the limits prescribed by the supervisor of the harbor of New York, as hereinbefore particularly described, as the limits within which the deposit of said mud and other matter was forbidden, and was not a point south and east and within a half a mile of said Mud buoy, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided—that is to say, in violation of the provisions of the act of Congress approved June 29th, 1888, entitled "An act to prevent obstructive and injurious deposits within the harbor and adjacent waters of New York city, by dumping or otherwise, and to punish and prevent such offenses," and the rules and regulations made and

prescribed by the supervisor of the harbor of New York pursuant to said act of Congress and the amendments thereto.

20 *Fourth Count.*

And the jurors aforesaid on their oath aforesaid do further present that the Congress of the United States of America did on or about the 29th day of June, 1888, pass a certain bill entitled "An act to prevent obstructive and injurious deposits within the harbor and adjacent waters of New York city, by dumping or otherwise, and to punish and prevent such offenses," which said bill the President of the said United States of America did approve on the 29th day of June, 1888, and thereupon said bill became a law of the United States; that by the provisions of said law, among other things, the placing, discharging, or depositing, by any process or in any manner, of refuse, dirt, ashes, cinders, mud, sand, dredgings, sludge, acid, or any other matter of any kind other than that flowing from streets, sewers, and passing therefrom in a liquid state in the tidal waters of the harbor of New York or its adjacent or tributary waters within the limits which shall be prescribed by the supervisor of the said harbor is thereby strictly forbidden.

And the jurors aforesaid do further present that by the provisions of said law it is further provided, among other things, that a line officer of the United States Navy should be designated by the President of the United States as supervisor of the said harbor of New York; said supervisor of said harbor to act under the direction of the Secretary of War in enforcing the provisions of the said act of the Congress.

21 And the jurors aforesaid do further present that the President of the said United States did, after his approval of said act of Congress as aforesaid, designate a line officer of the navy as such supervisor of said harbor of New York.

And the jurors aforesaid do further present that it is provided also in said act that in all cases of receiving on board of any scows or boats the forbidden matter or substance hereinbefore described it shall be the duty of the owner or master or person acting in such capacity on board of such scow or boat before proceeding to take or tow the same to the place of deposit to apply for and obtain from the supervisor of the harbor appointed thereunder a permit defining the precise limits within which the discharge of such scows or boats may be made, and any deviation from such dumping or discharging place specified in such permit shall, it is in said act provided, be a misdemeanor within the meaning of said act.

And the jurors aforesaid do further present that on or about the fifteenth day of August, 1894, the owners of the scows or boats hereinafter mentioned before proceeding to take or tow the same to the place of deposit applied for and obtained from the said supervisor of the harbor appointed as aforesaid a permit for the steamer "Stephen Decatur," defining the precise limits within which the discharge of such scows or boats might be made, which said dumping or discharging place specified in said permit was as follows:

South and east and within half a mile of what is known as the Mud buoy, which is a white spar buoy one and one-half
22 miles south of Coney island and located as follows:

Ranges. { North Swinburne island and New Dorp beacon in range.
{ Romer beacon and Point Comfort beacon in range.

Bearings. { Centennial tower bearing N. N. W. } Magnetic.
{ Romer beacon bearing S. W. by W. $\frac{3}{4}$ W. }

of all which matters and things the said John Ansbro had due notice before the commission of the wrongful acts done and performed by the said John Ansbro hereinafter set forth and complained of.

And the jurors aforesaid do further present that heretofore, to wit, on the fifteenth day of August, A. D. 1894, the said John Ansbro was the master of a certain steam vessel, to wit, the aforesaid steamer named "Stephen Decatur," of New York, and upon the day last aforesaid the said John Ansbro as such master as aforesaid received from the supervisor of the harbor of New York the permit aforesaid permitting the said steam vessel "Stephen Decatur," of New York, to pass with four certain scows, boats, or dumpers known as Nos. 4, 37, 39, 43, which said boats, scows, or dumpers then and there contained a large quantity of mud and other matter, a more particular description of which is to the jurors aforesaid unknown, other than that flowing from streets and sewers and passing therefrom in the liquid state, from Red Hook channel through the Narrows and Lower bay to the "Mud buoy," hereinbefore mentioned, and there south and east and within half
23 a mile of said Mud buoy to deposit the said mud and other matter contained in said scows or dumpers.

And the jurors aforesaid do further present that heretofore, to wit, on the fifteenth day of August, in the year of our Lord one thousand eight hundred and ninety-four, within the admiralty jurisdiction of the United States and within the jurisdiction of this court, in the southern district of New York, the aforesaid John Ansbro being then and there the master of the said steam vessel "Stephen Decatur," of New York, and which said steam vessel "Stephen Decatur" was knowingly engaged, used, and employed by the said John Ansbro, he being the master thereof and having the said permit from the said supervisor of the harbor of New York to tow said four scows or dumpers 4, 37, 39, 43, with their contents, from Red Hook channel, in said harbor of New York, through the Narrows and Lower bay to the said "Mud buoy," theretofore designated by the said supervisor of the harbor of New York, and which said scows or dumpers then and there contained a large quantity of mud and other matter, a more particular description of which is to the jurors aforesaid unknown, other than that flowing from streets and sewers and passing therefrom in a liquid state, the said mud and other matter as aforesaid *was* then and there unlawfully and knowingly dumped, placed, discharged, and deposited into the tidal waters of the harbor of New York and its adjacent and tributary

waters from said four scows or dumpers by direction of the said John Ansbro as such master of the said steam vessel "Stephen Decatur," of New York, and which said steam vessel "Stephen
24 Decatur" was then and there being used and employed by the said John Ansbro as the master thereof as aforesaid.

And the jurors aforesaid do further present that the place where the said mud and other matter *was* so dumped, placed, discharged, and deposited as aforesaid was not at the dumping or discharging place specified in said permit so as aforesaid granted to the said vessel, but deviated therefrom, as he, the said John Ansbro, then and there well knew, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided—that is to say, in violation of the provisions of the said act of Congress approved June 29th, 1888, entitled "An act to prevent obstructive and injurious deposits within the harbor and adjacent waters of New York city, by dumping or otherwise, and to punish and prevent such offenses," and the rules and regulations made and prescribed by the supervisor of the harbor of New York pursuant to said act of Congress and the amendments to said act of Congress.

25 *Fifth Count.*

And the jurors aforesaid on their oath aforesaid do further present that the Congress of the United States of America did on or about the 29th day of June, 1888, pass a certain bill entitled "An act to prevent obstructive and injurious deposits within the harbor and adjacent waters of New York city, by dumping or otherwise, and to punish and prevent such offenses," which said bill the President of the said United States did approve on the 29th day of June, 1888, and thereupon said bill became a law of the United States; that by the provisions of said law, among other things, the placing, discharging, or depositing, by any process or in any manner, of refuse, dirt, ashes, cinders, mud, sand, dredging, sludge, acid, or any other matter of any kind other than that flowing from streets, sewers, and passing therefrom in a liquid state in the tidal waters of the harbor of New York or its adjacent or tributary waters within the limits which shall be prescribed by the supervisor of the harbor is thereby strictly forbidden.

And the jurors aforesaid do further present that by the provisions of said law it is provided, among other things, that a line officer of the United States Navy should be designated by the President of the United States as supervisor of the said harbor of New York; said supervisor of said harbor to act under the direction of the Secretary of War in enforcing the provisions of the said act of the Congress.

26 And the jurors aforesaid do further present that the President of the said United States did, after his approval of said act of the Congress as aforesaid, designate a line officer of the navy as such supervisor of the harbor of New York.

And the jurors aforesaid do further present that the said line

officer of the navy so designated as such supervisor did thereupon and before the commission of the unlawful acts hereinafter alleged to have been done by one John Ansbro prescribe certain limits in said harbor of New York and its adjacent and tributary waters within which the placing, discharging, or depositing, by any process or in any manner, of refuse, dirt, ashes, cinders, mud, sand, dredgings, sludge, acid, cellar dirt, and other matter other than that flowing from streets, sewers, and passing therefrom in a liquid state in the tidal waters of the harbor of New York or into the adjacent or tributary waters thereof should be forbidden, and did establish a certain mark or buoy known as the "Mud buoy," which is a white spar buoy one and a half miles south of Coney island and located as follows: Ranges—north side Swinburne island and New Dorp beacon in range; Romer beacon and Point Comfort beacon in range. Bearings—Centennial tower bearing N. N. W.; Romer bearing S. W. by W. ¾ W., magnetic; and did prescribe and define as the place where the matter hereinafter described as having been unlawfully deposited by said John Ansbro must be discharged or deposited and within which such discharge or deposit was forbidden as "south and east and within a half a mile of said Mud buoy," of all which matters and things the said John Ansbro
27 had due notice before the commission of the wrongful acts done and performed by the said John Ansbro hereinafter set forth and complained of.

And the jurors aforesaid do further present that heretofore, to wit, on the eighteenth day of August, in the year of our Lord one thousand eight hundred and ninety-four, within the admiralty jurisdiction of the United States and within the jurisdiction of this court, in the southern district of New York, one John Ansbro, being then and there the master of a certain vessel commonly called a steamtug and named "Stephen Decatur," and which said steamtug "Stephen Decatur" was knowingly engaged and employed by the said John Ansbro, the master thereof, in towing from Red Hook channel, in said harbor of New York, through the Narrows and Lower bay, in said harbor, to the "Mud buoy" theretofore designated by the said supervisor of the harbor of New York, three certain scows or dumpers, known as Numbers 2, 37, 49, which said scows or dumpers then and there contained a large quantity of mud and other matter, a more particular description of which is to the jurors aforesaid unknown, other than that flowing from streets and sewers and passing therefrom in a liquid state; the said mud and other matter as aforesaid was then and there unlawfully and knowingly dumped, placed, discharged, and deposited into the tidal waters of the harbor of New York and its adjacent and tributary waters from said three scows or dumpers by direction of the said John Ansbro, as such master of said vessel commonly called
28 a steamtug and named "Stephen Decatur," and which said steamtug "Stephen Decatur" was then and there being used and employed by the said John Ansbro as the master thereof as aforesaid.

And the jurors aforesaid do further present that the place where

the said mud and other matter was so dumped, placed, discharged, and deposited as aforesaid was a point and place within the limits prescribed by the supervisor of the harbor of New York, as hereinbefore particularly described, as the limits within which the deposit of said mud and other matter was forbidden, and was not a point south and east and within a half a mile of said Mud buoy, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided—that is to say, in violation of the provisions of the act of Congress approved June 29th, 1888, entitled "An act to prevent obstructive and injurious deposits within the harbor and adjacent waters of New York city by dumping or otherwise, and to punish and prevent such offenses," and the rules and regulations made and prescribed by the supervisor of the harbor of New York pursuant to said act of Congress and the amendments thereto.

29 *Sixth Count.*

And the jurors aforesaid on their oath aforesaid do further present that the Congress of the United States of America did on or about the 29th day of June, 1888, pass a certain bill entitled "An act to prevent obstructive and injurious deposits within the harbor and adjacent waters of New York city by dumping or otherwise, and to punish and prevent such offenses," which said bill the President of the said United States of America did approve on the 29th day of June, 1888, and thereupon said bill became a law of the United States; that by the provisions of said law, among other things, the placing, discharging, or depositing by any process or in any manner of refuse, dirt, ashes, cinders, mud, sand, dredgings, sludge, acid, or any other matter of any kind other than that flowing from streets, sewers, and passing therefrom in a liquid state in the tidal waters of the harbor of New York or its adjacent or tributary waters, within the limits which shall be prescribed by the supervisor of the said harbor, is thereby strictly forbidden.

And the jurors aforesaid do further present that by the provisions of said law it is further provided that — other things that a line officer of the United States Navy should be designated by the President of the United States as supervisor of the said harbor of New York, said supervisor of said harbor to act under the direction of the Secretary of War in enforcing the provisions of the said act of the Congress.

30 And the jurors aforesaid do further present that the President of the said United States did, after his approval of said act of Congress as aforesaid, designate a line officer of the navy as such supervisor of said harbor of New York.

And the jurors aforesaid do further present that it is provided also in said act that in all cases of receiving on board of any scows or boats the forbidden matter or substance hereinbefore described it shall be the duty of the owner or master or person acting in such capacity on board of such scow or boat, before proceeding to take

or tow the same to the place of deposit, to apply for and obtain from the supervisor of the harbor appointed thereunder a permit defining the precise limits within which the discharge of such scows or boats may be made, and any deviation from such dumping or discharging place specified in such permit shall, it is in said act provided, be a misdemeanor within the meaning of said act.

And the jurors aforesaid do further present that on or about the eighteenth day of August, 1894, the owners of the scows or boats hereinafter mentioned, before proceeding to take or tow the same to the place of deposit, applied for and obtained from the said supervisor of the harbor appointed as aforesaid a permit for the steamer "Stephen Decatur," defining the precise limits within which the discharge of such scows or boats might be made, which said dumping or discharging place specified in said permit was as follows:

South and east and within half a mile of what is known as the
31 Mud buoy, which is a white spar buoy one and one-half miles south of Coney island and located as follows:

Ranges. { North Swinburne island and New Dorp beacon in range. / Romer beacon and Point Comfort beacon in range.

Bearings. { Centennial tower bearing N. N. W. / Romer beacon bearing S. W. by W. ¾ W. } Magnetic.

of all which matters and things the said John Ansbro had due notice before the commission of the wrongful acts done and performed by the said John Ansbro hereinafter set forth and complained of.

And the jurors aforesaid do further present that heretofore, to wit, on the eighteenth day of August, A. D. 1894, the said John Ansbro was the master of a certain steam vessel, to wit, the aforesaid steamer named "Stephen Decatur" of New York, and upon the day last aforesaid the said John Ansbro, as such master as aforesaid, received from the supervisor of the harbor of New York the permit aforesaid, permitting the said steam vessel "Stephen Decatur" of New York to pass with three certain scows, boats, or dumpers, known as Nos. 2, 37, and 42, which said boats, scows, or dumpers then and there contained a large quantity of mud and other matter, a more particular description of which is to the jurors aforesaid unknown, other than that flowing from streets and sewers and passing therefrom in the liquid state, from Red Hook channel through the Narrows and Lower bay to the "Mud buoy" hereinbefore mentioned,

and there south and east and within half a mile of said
32 Mud buoy to deposit the said mud and other matter contained in said scows or dumpers.

And the jurors aforesaid do further present that heretofore, to wit, on the eighteenth day of August, in the year of our Lord one thousand eight hundred and ninety-four, within the admiralty jurisdiction of the United States and within the jurisdiction of this court, in the southern district of New York, the aforesaid John Ansbro, being then and there the master of the said steam vessel "Stephen Decatur" of New York, and which said steam vessel "Stephen De-

catur" was knowingly engaged, used, and employed by the said John Ansbro, he being the master thereof and having the said permit from the said supervisor of the harbor of New York to tow said three scows or dumpers 2, 37, and 42, with their contents, from Red Hook channel, in said harbor of New York, through the Narrows and Lower bay to the said "Mud buoy" theretofore designated by the said supervisor of the harbor of New York, and which said scows or dumpers then and there contained a large quantity of mud and other matter, a more particular description of which is to the jurors aforesaid unknown, other than that flowing from streets and sewers and passing therefrom in a liquid state; the said mud and other matter as aforesaid was then and there unlawfully and knowingly dumped, placed, discharged, and deposited into the tidal waters of the harbor of New York and its adjacent and tributary waters from said three scows or dumpers by direction of the said John Ansbro, as such master of the said steam vessel "Stephen Decatur" of New York, and which said steam vessel "Stephen
33 Decatur" was then and there being used and employed by the said John Ansbro as the master thereof as aforesaid.

And the jurors aforesaid do further present that the place where the said mud and other matter was so dumped, placed, discharged, and deposited as aforesaid was not at the dumping or discharging place specified in said permit so as aforesaid granted to the said vessel, but deviated therefrom, as he, the said John Ansbro, then and there well knew, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided—that is to say, in violation of the provisions of the said act of Congress approved June 29th, 1888, entitled "An act to prevent obstructive and injurious deposits within the harbor and adjacent waters of New York city by dumping or otherwise, and to punish and prevent such offenses," and the rules and regulations made and prescribed by the supervisor of the harbor of New York pursuant to said act of Congress and the amendments to said act of Congress.

(Endorsed:) U. S. circuit court. The United States of America *vs.* John Ansbro. Indictment: Illegal dumping in harbor of New York city; violation of act of Congress of June 29, 1888, U. S. Rev. St., sec. —. Wallace Macfarlane, U. S. district attorney. A true bill. John H. Hudson, foreman. Filed in open court the 9th Oct., 1894. Oct. 15, 1894, the defendant arraigned and ind'c't read.
34 Def't pleads not guilty. '94, Oct. 18, mo. to quash argued. Denied. October 23, 24, 25, 1894, the defendant tried. Verdict: Guilty of charge contained in 2nd count of indictment; not guilty of charges contained in 4th & 6th counts of indictment. '94, Nov. —, mo. in arrest of judg't & for new trial made. Mo. in arrest of judg't & for new trial denied. (See order on file.) A. A. Wray, for defendant. 1894, December 20, sentenced to six (6) months' imprisonment. U. S. circuit court. Filed Oct. 9, 1894. John A. Shields, clerk.

35 TUESDAY, *October 23rd*, 1894.

The court meets and is opened by proclamation.
Present: Hon. Charles L. Benedict, judge.

THE UNITED STATES
vs.
JOHN ANSBRO.

On motion of U. S. attorney, ordered trial.

Jurors Sworn.

Simon Dottenheim, Edward W. Thompson, William Bennett, Thomas N. Morgan, Joseph Eschelbacher, Thomas J. Davies, Irving P. Alcott, William Douglas, Charles E. Whittemore, William Engelberg, Theodore Weed, Henry Fincke.

Mr. Wallace Macfarlane, U. S. attorney, opens cause in behalf of prosecution.

Evidence for Prosecution.

John C. Fremont sworn.
Richard H. Vandecar "
Anselm Anderson "

Trial suspended until 24th inst., at 11 a. m.

36 WEDNESDAY, *October 24th*, 1894.

The court meets and is opened by proclamation.
Present: Hon. Charles L. Benedict, judge.

THE UNITED STATES
vs.
JOHN ANSBRO.

The above cause being still on trial, the jurors are called and severally answer to their names.

Evidence for Prosecution.

Anselm Anderson resumed.
Milius Nordstrom sworn.
John C. Fremont resumed.
Richard H. Vandecar "
Mr. Albert A. Wray opens cause in behalf of defendant.

Evidence in Behalf of Defendant.

Michael F. O'Shaughnessey sworn.
John Ansbro "
Charles E. Eckhoff "
George W. Delamater "
Anthony Coll "

37 *Rebuttal in Behalf of Prosecution.*

John C. Frémont recalled.

Surrebuttal.

Charles E. Eckhoff recalled.

Motion made by Mr. Wray, def't's att'y, that court direct verdict of acquittal. Denied. Exception.

Motion made by Mr. Wray, def't's att'y, to require U. S. attorney to elect upon what counts of indictment the prosecution will go to the jury. Denied. Exception.

Mr. Wray sums up cause in behalf of defendant.

Further trial suspended to 25th inst., at 11 a. m.

THURSDAY, *October 25th*, 1894.

The court meets and is opened by proclamation.

Present: Hon. Charles L. Benedict, judge.

THE UNITED STATES
vs.
JOHN ANSBRO.

The above cause being still on trial, the jurors are called and severally answer to their names.

Mr. Wallace Macfarlane, U. S. attorney, sums up cause in behalf of prosecution.

38 Charge is thereupon given by the court to the jury, who retire in charge of an officer duly qualified to attend them, and on their return they say that they find the defendant guilty of the charges contained in the second count of the indictment and not guilty of the charges contained in the 4th and 6th counts of the indictment, and so say they all.

Notice given by defendant's attorney that he will make motions in arrest of judgment and for new trial under the rule.

Ordered that defendant give bail in sum of $1,500, subject to the approval of U. S. attorney.

FRIDAY, *Nov.* 16, 1894.

The court meets and is opened by proclamation.

Present: Hon. Charles L. Benedict, judge.

THE UNITED STATES
vs.
JOHN ANSBRO.

Motions for new trial and arrest of judgment coming on to be heard this day—

Mr. Wray is heard in support thereof.

Mr. Macfarlane, U. S. attorney, opposed.

39 At a stated term of the United States circuit court, held at the court-room, in the United States circuit court house and post-office building for the second circuit, in the city of New York, on the 23rd day of November, 1894.

Present: Hon. Chas. L. Benedict, judge.

THE UNITED STATES OF AMERICA *vs.* JOHN ANSBRO. } Order Denying Motion for a New Trial and in Arrest of Judgment.

After hearing Albert A. Wray, Esq., for the motion for a new trial and in arrest of judgment in the above-entitled action on behalf of the said motion, and Wallace Macfarlane, Esq., U. S. attorney, in opposition thereto, and the court having duly considered the same—

It is ordered that the said motion for a new trial and the said motion in arrest of judgment in the above action be, and the same are hereby, denied.

CHAS. L. BENEDICT.

(Endorsed:) U. S. circuit court, southern district of New York. United States *vs.* John Ansbro. Order denying motion. Wallace Macfarlane, United States attorney, attorney for plaintiff. U. S. circuit court. Filed Nov. 26, 1894. John A. Shields, clerk.

40 THURSDAY, *December 20th*, 1894.

The court meets and is opened by proclamation.

Present: Hon. Charles L. Benedict, judge.

THE UNITED STATES *vs.* JOHN ANSBRO. } Illegal Dumping in Harbor of New York City. Violation of Act of June 29, 1888.

On motion of U. S. attorney, ordered sentence.

The court thereupon proceeds to pass judgment and sentence the prisoner, John Ansbro, to be imprisoned for a period of six (6) months.

41 United States Circuit Court, Southern District of New York.

JOHN ANSBRO, Plaintiff in Error, *against* UNITED STATES, Defendant in Error. } Before Hon. Chas. L. Benedict and a Jury.

Defendant's Bill of Exceptions.

And afterwards, to wit, on the 23rd day of October, 1894, and on the 24th & 25th days of October, 1894, this cause came on to be tried before the Honorable Charles L. Benedict, U. S. district judge, and a jury duly impaneled and sworn to try the issues herein, and during the course of the trial and before the rendering of the verdict

therein the counsel for the defendant did take and allege certain exceptions to certain rulings of the court; which said exceptions were by the court duly allowed and are hereinafter specifically set forth.

Appearances: Wallace MacFarlane, U. S. attorney, for the Government; Foley & Wray, Esqs. (Wm. Wray), Albert A. Wray, Esq., for the defendant.

A jury is empaneled and sworn.

42 To sustain the issues on its part the complainant introduced the following evidence:

Mr. WRAY: If your honor please, I renew my motion to quash the indictment for the reason——

The COURT: No motion to quash can be entertained after the jury is empaneled.

Mr. WRAY: I desire to call your attention to this: We have six counts in the indictment which is drawn to cover three offenses. It seems to me that the United States should elect on which of those counts they intend to go to trial.

The COURT: After they get through their testimony we will see which count they should elect.

Mr. Macfarlane opened the case on behalf of the Government.

JOHN C. FREMONT, sworn and examined as a witness on behalf of the Government, testified as follows:

Direct examination by Mr. MACFARLANE:

I am a lieutenant in the navy, assigned to duty as assistant supervisor of the harbor of New York and was so assigned on May 1st, 1894, and have been such ever since. Lieutenant Commander Delehanty is supervisor and has been since and prior to May 1st, 1894, and is still.

Three permits are offered in evidence by Mr. Macfarlane and marked Government Exhibits 1, 2, and 3 of this date (annexed to bill of exceptions).

43 I remember the first of May, 1894.

The COURT: Do these permits show that they were obtained by this defendant for this tow?

Mr. MACFARLANE: One for the tow P. H. Wise and the other two for the Stephen Decatur.

Mr. WRAY: We admit that they were obtained for his use and were used by him.

Examination continued:

I was in command of one of the patrol-boat named "Argus," on the first of May, 1894, and saw the tug P. H. Wise towing scows on that day. I saw her about noon. She was in the east channel and we were just around in the point at Coney island. Her position was in the east channel, just outside of the Romer beacon—that is, at a point in a direct line across the shoals—a matter of two and a half to two and three-quarter miles.

The COURT: Have you got that marked down on your chart there?

Mr. MACFARLANE: Yes, sir.

The COURT: Let him say whether it was inside that triangle.

Q. You see where the blue figure is, where Mr. Wray says he has marked the triangle? (Map shown.)

A. Yes, sir.

By the COURT:

Q. That is right?

A. Yes, sir.

By Mr. MACFARLANE:

Q. Whereabouts within that quadrant was the tugboat P. H. Wise with her scows?

A. Where?

Q. As to being within half a mile south and east of the Mud buoy?

44 A. When we passed her she was not within two miles of it.

Q. When you first saw her what was the condition of the scows; were they loaded or light?

A. Loaded.

By the COURT:

Q. Two miles which way?

A. Right across the shoals of the east channel.

By Mr. MACFARLANE:

Q. She was two miles, then, towards New York?

A. Towards the harbor of New York.

Q. Will you point out where that point is on the chart?

(The witness does as requested.)

By the COURT:

Q. Where were they when you saw them first?

A. In the east channel. You will see something marked "Romer beacon." They were in that neighborhood.

Q. Where, with reference to Romer shoals?

A. They were passing the Romer shoals—passing outward and heading southward and eastward.

By a JUROR:

Q. Was this when you first saw them?

A. Yes, sir.

By Mr. MACFARLANE:

The scows were loaded. I kept looking at her occasionally. A matter of fifteen minutes—about ten or fifteen minutes afterwards—I saw the scow's light.

By the COURT:

Q. They dumped there loads, then, either ten or fifteen minutes after you saw them?

A. Yes, sir.

By Mr. MACFARLANE:

I looked at the scows through the glass. I saw that they had been dumped; I saw that they had risen out of the water. Between the time when I first saw the tug and saw the tows loaded and when I noticed her fifteen minutes afterward, the dump was discharged.

45 Q. Did she proceed, then, to any point south and east and within half a mile of the Mud buoy?

A. No; she had not gone three-quarters of the way.

By the COURT:

Q. Which way was she going with reference to the Mud buoy?

A. At right angles, abreast the Mud buoy. She had to keep in the channel. She went down the east channel—in the neighborhood of two miles—on the inside about two miles from the Mud buoy. When I first noticed them light and noticed that the scows had been discharged she must have been more than two miles from the Mud buoy. I made these marks on this chart myself. (Chart shown). The lead-pencil mark is the position of the Mud buoy by the ranges. On the sketch of this chart the line running south indicates the half-mile line; the line running east indicates half a nautical mile. The quadrant drawn between the two lines encloses the space in which or within which by the terms of this permit they were bound to discharge this load. When I first saw this tug with the tows they were in the east channel. The east channel is the channel which I have marked. When I first saw them they were loaded, and within about fifteen minutes afterwards I noticed that they had been discharged. They were still proceeding down the east channel. I at once spoke to the captain of the Argus, in which I was. I called his attention to the tow and then ordered the Argus to proceed at full speed toward the tow to fortify my observation of the tows having lightened. We had to go, of course, around the north end of the east bank, not being able to cross

46 it, drawing too much water. We both proceeded on a segment of a circle towards each other. In going through I made a slight detour to pick up a buoy which had been reported adrift, which we met about three-quarters of a mile south of the Mud buoy.

By the COURT:

Q. He was in the east channel?

A. She was pulling up all the time and we were pulling up towards the Mud buoy, heading about north.

By Mr. MACFARLANE:

When we first got to her she was not within the limits prescribed by the permit as the place to dump. When we got to the tow we swung down by the starboard, turned under the stern of the scows, and came up alongside the tug P. H. Wise. I then hailed the person in the pilot-house and asked him why they had dumped short, which is a technical term for dumping out of the limits. He replied that he did not know; that the captain had turned in. I said, "Turn him out; I want to speak to him." The defendant came out partially undressed and I asked him why he dumped short; and, evidently not knowing me, he said, "Mr. Delehanty, I could not help it; our lines parted." I said that was no excuse. The captain who made that statement was the defendant, who sits here.

By the COURT:

The scows were empty then. I did this hailing just to the southward of the tug. When we first came to the tow we were from a quarter to half a mile south of the outside of the triangle or a mile or three-quarters south of the Mud buoy.

By Mr. MACFARLANE:

I did not lose sight of the scows for over a minute.

47 Q. When you first noticed that the vessel and the tow had got nearly to the point at which you reached her and hailed her?

A. No, sir; she was pulling up steadily all the time. The captain of the Argus was Captain Vandecar. These limits read from the permits here in respect to the location of the Mud buoy have been prescribed by the supervisor of the harbor.

By the COURT:

Q. Can you mark on this chart the course that the vessel pursued with her dumps?

A. In a general manner, yes.

Q. Suppose you do it.

(The witness does as requested.)

Q. You saw them on that course?

A. Several times.

Cross-examination by Mr. WRAY:

I am familiar with the ground down about where the dumping buoy is. There is no mark of any kind in the neighborhood of the dumping buoy itself put there by the supervisor of the harbor or by any other person for marking the limits within which dumping must be placed. Absolutely nothing except the dumping buoy itself, a white buoy, a spar buoy. It has been in its present location some few months. I cannot tell you how long ago we changed it. We moved it in about a mile and a quarter, I think, northwest.

It was further out; further to the southward and eastward. I cannot state what the limits of the dumping ground then covered.

Q. Don't you know, as a matter of fact, that the supervisor of the harbor prescribed as the dumping limit any place south and east of that Mud buoy; anywhere to the southward?

Objected to.

48 Mr. WRAY: I merely want to show the custom.
The COURT: I do not see how that is material.

Cross-examination continued:

There is no ra*b*ge given on this permit by which the half-mile limit from the buoy can be found by the navigator, nor bearing, nor is there any range given; no bearing other than the general bearing south and east. I was all over the Argus on this day, in the pilot-house, on deck, and aft. I was in the pilot-house when I first saw the tug and her tow. Captain Vandecar and a contractor for the Brooklyn Garbage Company was also there. Shortly after that the captain was relieved by the mate, O'Shaughnessey; that was in the neighborhood of half an hour after we first sighted the scows. They were in the east channel by the Romer beacon; more than two miles away from the buoy.

Q. Where were the scows, the tug and scows, if you remember, at the time that the mate relieved the captain at the wheel?

By the COURT:

Q. Was that before or after you sighted them?

A. Before. I was not in the pilot-house when they were overhauled. I was outside on the forward deck.

By Mr. WRAY:

Q. Do you know where the scows were?

A. In a general manner they were turning up outside the east bank. I simply recollect that the mate relieved the captain for a few minutes. I could not locate it very closely where. My best judgment is the captain was still in the pilot-house on the two occasions of which I have spoken, and was in there some few
49 minutes. When I saw the scows dumped my position was south of Coney island in the channel and about the bell buoy, I think. We passed the bell buoy going out. I remember my testimony before the commissioner in this same matter.

Q. Do you remember that you testified on that occasion that you were about half way between the iron piers and Norton's point?

A. That is about the same position.

Q. How far do you say that was away from the Mud buoy?

A. Norton's point is three miles; over two miles—no, hold on, about two miles; I never measured it.

Q. You remember your testimony before?

A. I think it is about three miles from Norton's point to the buoy.

Q. How far do you say you were from the Mud buoy?

A. In the neighborhood of two miles.

Q. Do you remember that you testified before the commissioner, in your judgment, you were about a mile or a mile and a quarter from the Mud buoy?

A. I remember you asking me questions and I telling you I would have to guess at the distance.

Q. That was your guess?

A. Possibly.

Q. Do you remember what you testified to on that occasion?

A. To the distance.

Q. Being a mile or a mile and a quarter away from the Mud buoy?

A. I remember a good many questions as to distances. What they were I don't remember.

Q. So that you cannot say what your testimony was on that occasion?

A. Except that I stated it was guess-work.

Q. You guessed at it, then?

A. I don't know.

Q. Was there no other rule for measuring known to you
50 at that time other than guess-work?

A. Certainly; to take it off the chart.

Q. Did you take off the chart the distance the tug and the scows were from the Mud buoy?

A. I don't remember. I don't think we had the chart until after the case was finished.

Q. So that your testimony as to the distance the tug and scows were from the Mud buoy was as much guess-work as your testimony as to your own distance from the Mud buoy?

A. Not at all.

Q. Was it not based on the same thing?

A. No.

Q. Will you state how you know how far they were from the Mud buoy?

A. Because I know certain objects in the harbor. The Romer beacon I know. I know its distance from the Mud buoy, and if the tow is in that neighborhood I must know how far it is from the Mud buoy.

Q. You have been down there before?

A. Yes, sir.

Q. And you knew how far the Mud buoy was from Coney island?

A. Yes; from Norton's point.

Q. You had as definite information as to the Mud buoy as you had as to the Romer?

A. Yes, sir.

Q. So that any distance which you might testify to as being the distance from the Mud buoy that you were at that time would be based on the same knowledge and information as the distance you testified that the tug and scows were?

A. No; I told you in that connection, if my memory serves me

right, that our location was in the Coney Island channel
51 about half way to the iron piers. As a matter of fact I did notice where we were, whether a quarter or a half a mile——

Q. You did not know with any definiteness where you were?

A. I was not steering the boat. I know that we were in the Coney Island channel.

By the COURT:

Q. Had you passed the bell buoy?

A. I think we had; yes. We were standing out.

Q. Is there a good channel from Norton's point to this buoy?

A. Yes; first rate.

Q. You passed in a direct course?

A. There is one bad spot that has to be avoided.

Q. There is no difficulty in going out that way?

A. I never found any. That is the custom.

By a JUROR:

Q. Is that the same channel the iron steamboats take?

A. Precisely.

By Mr. WRAY:

I had seen other tugs and scows this same morning. We were following out one of those contractors. It was about noon—the time the dumping took place. It was a clear, nice day at sea. From the time I first saw the tug her course, in general terms, until I came up to her was as follows: She stood out to the southerly and eastward until she cleared the east channel and then gradually turned up to the northward to the Mud buoy. The tide was about slack water.

By Mr. WRAY:

Q. How long was it after you first saw her that you came up to her?

A. I did not pay particular attention to the matter until I saw her dump her scows. I would have to guess at the time;
52 say forty minutes from the time she dumped until I came up; forty minutes from the time I first saw her until I came up to her.

Q. She was going out through the east channel, holding up, and passed the buoy. She passed right through the prescribed limit for dumping, did she not?

A. I don't know. She had left her dump by that time. She had not got there. She was to the south when I came up to her. We left the Mud buoy at our port hand going out. We were close to the buoy. We stood in, looking for this red buoy, and as soon as I sighted the red buoy I turned right south. I could see the Mud buoy from where I first saw the scows. I could *see* the Mud buoy plainly. I could make it out plainly. I could see it and know it was there—I saw it, in fact. I did not look for it until they dumped, and then I did look. I was, I think, about two miles

from the Mud buoy and somewhere about half way between Norton's point and the piers at that time. I frequently looked for the buoy when I was up around Coney Island point. On a good day you can see it—that is, with the glass.

Q. Can't you see it with the naked eye?

A. Possibly. I never tried to. I saw it on this day with the glass. I know I looked with the glass. I don't say that you could not have seen it looking without the glass. I looked with the glass. I could not tell now how long after I passed the Mud buoy it was before I came up with the tug. I did not look at any clock. She was more than half a mile below the buoy. I fix the distance that the tugs and scows were below the buoy by the appearance of things—simply by looking at them. I did not take any angles. I estimated the distance, but took no bearings. I simply
53 wanted to make the time she dumped until I came up; forty minutes from the time I first saw her until I came up to her.

Q. She was going out through the east channel holding up and passed the buoy. She passed right through the prescribed limit for dumping, did she not?

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54 self sure that what I had seen had taken place.

By Mr. WRAY:

Q. How far was the end of the tow below the Mud buoy at that time?

A. I have been referring to the tug all this time. The end of the tow was, I fancy, he had 150 fathoms of line out, nine hundred to a thousand feet. The tide was swinging up north.

The COURT: I think you had better show to the jury the points where you were and show them the Mud buoy. (The witness indicates to the jury the points designated by the court.)

By Mr. WRAY:

The tide had just stopped running out. As he came around the Mud buoy, after having dumped the scows, he would get the flood tide home. These scows were dumped the general method. They are center dumpers. They have doors in the bottom which open and the stuff drops out. They work these doors by a shaft and a chain. The chain is wound up around the shaft.

It is worked by a pawl. It is all done on the deck and the bottom drops out.

Q. As a matter of fact, he had to go right past by the buoy exactly in the same course he would have taken if he had not dumped?

A. No, sir.

Q. I have the testimony taken before Commissioner Shields in this matter in which I find this statement: "We were about one mile or one mile and a quarter from the Mud buoy when I saw the dumping." Did you make that statement at that time?

A. Yes; I had previously stated I was guessing at our position and the distance.

Q. When you came to see the chart you found you were two miles or more away from the Mud buoy?

55 A. Not over two miles.

Q. You were at least two miles?

A. No; I don't know that.

Q. You were half way between Coney Island pier and the point?

A. We were between the Coney Island pier and the bell buoy. Naturally we were between the point and the pier.

Q. As a matter of fact, don't you remember this? Does this refresh your memory so that you can remember: "Counsel for Captain Ansbro then and there produced the chart and with the dividers or some other instrument measured off the distance where you admitted you were and found it was at least two miles from the Mud buoy"?

A. After the case was concluded the chart was produced and various measurements made. What I stated I don't know.

Q. Do you remember whether you admitted that the place on the chart as the place where you believed you were in Coney Island channel was two miles by actual measurement from the Mud buoy?

A. No, sir; I don't remember, because it was a matter of conversation simply. We were conversing together.

Q. Before the commissioner did you make this statement which I have just read?

A. Undoubtedly.

Q. That you were a mile or a mile and a quarter from the Mud buoy at the time you saw the dumping?

A. Yes, sir.

Redirect by Mr. MacFarlane:

The nearest point of the east channel to the Mud buoy is about two miles distant from the buoy. I can measure it on the scale. (The witness measures on the scale.) In a direct line it would be a short two miles—that is, in a direct line across the end of the shoal.

56 Q. Extend the line south half a mile from the Mud buoy, how close to the nearest point of the east channel would the end of that half-mile line be?

A. A little over a mile and a half.

On the morning of May 1st, when I saw this occurrence, I think the tide was low water—slack. Low water refers to the tide being down, and slack referring to the current.

By the Court:

I know these waters very well and the locations of buoys in these waters. It depends altogether on the atmospheric conditions how far you can see the Mud buoy in ordinary weather. That buoy is a spar buoy. Because it is a white buoy, on a dark day you can see it better. You can see it sometimes three and a half miles. That location is perfectly well known to boatmen in the Lower bay who have any business out there. It has been in its present position some months.

Q. Are you skilled enough to tell how near that buoy a man can go with ordinary skill?

A. He can tie up to it.

Q. Is there any difficulty in dumping within half a mile of that Mud buoy by a skilled man?

A. You can go within a foot of it.

By a Juror: How many feet of water is there there?

A. When we put the buoy down it was about thirty feet. It has been shoaled up until there is a scant fifteen feet at low water. Speaking roughly, I should say that the scows draw about twelve feet, but they vary.

By Mr. MacFarlane:

57 There were two objects in putting this Mud buoy at this spot. We moved it from the position it was in because they were filling the mouth of the east channel. According to the chart it has been shoaled there. We removed it and put it into a large hole where there is deeper water than there is anywhere around. It was done partly at the request of the engineering department of the army to prevent a possible hostile fleet approaching the shore. There was a big hole there which we thought should be filled up.

Cross-examination by Mr. Wray:

Before the buoy was moved it was about a mile and a quarter to the southward and eastward of its present location.

Q. Where were they required to dump under the old conditions where the buoy was before?

The COURT: It doesn't make any difference. I understand any navigator of skill can know when he is within half a mile of that buoy?

Mr. WRAY: I understand any navigator can see the buoy.

Q. Is there anything to indicate that half-a-mile limit?

A. No; I mean that no one could be sure of being within half a mile, because there is nothing to prevent going within a foot of it.

Q. Do you mean to say that there is anything to indicate when you get within half a mile or is it the mere guess-work which you would make if you wanted to go within half a mile of any other buoy?

A. There is nothing defining the limit of half a mile.

Q. So that a man would make the same guess as to that buoy that he would as to any other?

A. Yes, sir.

58 Captain RICHARD VANDECAR called and sworn as a witness on behalf of the Government.

By Mr. MACFARLANE:

On May 1st last I was master and deputy inspector of the supervisor's tug Argus. I was serving with the supervisor of the harbor. On the first of May, 1894, I saw this tug P. H. Wise with some loaded scows. I first saw her at the upper end of the Narrows. When we first saw the tug I was bound for New York to pier 3. I mean up. I took her permit up, taking the time of her permit. I went alongside of her and took up her permit. She was passing out, I was coming in. The course of our business is when I pass a loaded tow going out I take up the permit from the tugboat. This tug was going out when I took up the permit. We came right in then, and Lieutenant Freemont brought a Mr.—I don't know his name—and we went right back as fast as we could. After we started back we first sighted the Wise with this tow that I had passed as we turned Coney Island point. The tow was about half way through the east channel. That is the way they go to the Mud buoy sometimes, depending on the draught of the boats or scows. I have seen twelve to thirteen feet go through Coney Island channel.

Q. Is it safe for twelve feet?

A. It depends; not at low water.

By a JUROR:

Q. Is this channel shallower than the other?

A. Yes, sir.

By Mr. MACFARLANE:

59 The east channel is deeper than the Coney Island channel. We were just turned Norton's point when I first saw the Wise and tow; that is two miles and a half from the Mud buoy. From where I first saw her—that is, Norton's

point—is, I should judge, two miles and a half from the Mud buoy. The scows were loaded when I first saw the Wise after rounding Norton's point. The first we saw when they were light was when we proceeded about half way between the middle buoy, a red spar buoy, and the iron pier. They had been lightened. They were still winding up. They had just commenced to haul up. They were on the turn. As near as I can remember, when I first noticed that they been discharged they were very near two miles from the Mud buoy. The Argus, I should judge, was about a mile or three-quarters from the Mud buoy.

By the COURT:

Q. They dumped right in the east channel?
A. At the entrance——
Q. But in the east channel?
A. Yes, sir.

By Mr. MACFARLANE:

After I noticed that the scows had been discharged I proceeded out towards the tug Wise. As we started, my pilot, Mr. O'Shaughenessy, came in the pilot-house and I went to dinner. We went out. Just as he rounded to under the end of the tow and got alongside I came in. I came up alongside the Wise and the mate was steering, and I says, "What did you dump down there for?" He said, "I was not superintending it." Mr. Fremont was standing right aft the windows. He said, "Where is the captain?" and the mate said, "He has turned in," and Mr. Fremont said, "Turn him out." The man came out with his suspenders off his shoulders and in his shirt-sleeves. Lieutenant
60 Fremont said, "Why did you dump short?" He said, "I could not help it, because my lines broke and because my scows got away." The water was very smooth—just a little roll on. I did not notice any broken lines between the tows or any barges adrift. We then came in and met a garbage-boat. I could not tell you what course the tow took then. I didn't pay any attention to her after that.

Cross-examination by Mr. WRAY:

After I took up the permit of the Wise it was two hours and a half—over—about three hours, I should judge, before I came back and sighted her. I took it up at the upper end of the Narrows, if I remember right. I think it was eight o'clock and some minutes if I am not mistaken. I was around that neighborhood. We were bound up. It might have been between eight and nine. It was between those hours, I am pretty positive. We came directly back, probably two to three hours, I should say. After I took up her permit I went back to the point. I should judge it was about that neighborhood. I can tell the P. H. Wise as far as I can see her. She is a medium tug. She is a good tug. There are others larger and a great many smaller. I presume she is a seagoing tug. I never

was aboard of her. I have seen her go to sea with scows. We were outside of Coney Island channel; just turned the point when I first sighted her. The Argus is between a six and seven knot boat. She is a good boat for her kind, but a very poor kind. I should judge she was making 6 or 7 knots going out, but she came in a trifle over seven knots an hour. I hooked her up at full speed. She would
61 probably make seven knots; maybe a little more. She is a boat that varies some. I have seen her go ten knots. She was in fair shape at that time. I think this was before she broke down—when she was getting ready to break down. I sighted the Wise after I came back, when I turned Coney Island point; right at the point. I should judge she was then just about abreast the middle buoy in the east channel; probably a little further than half way through it. My duty is to look out for those people—that is, every tug that has a mud scow in tow. She was the only tug that went the east way. There was one right behind us. That tug was going down. I kept watching both. We had her to watch after she got out of the bay. I was at the wheel looking all over.

Q. How far do you think she had travelled in distance before she dumped?

A. Well, now, I can't tell you.

The COURT: From where?

Mr. WRAY: From where she was when he first sighted her.

By the COURT:

Q. How far did she go?

A. Well, I presume, your honor, she must have went probably two miles or a mile and three-quarters.

By Mr. WRAY:

It is not a guess. I estimated with my eye. There is no fixed way to judge exactly how far they were without we get on ranges. I did not get any ranges in that position. He was just opposite the Highland lights and outside the Romer beacon. He was to the eastward of the Highland lights when I first discovered him. I saw the Romer to the westward of him. The Argus had got half way between the red spar buoy and the iron
62 piers when he dumped; about half way, not quite half way, between the red spar buoy and the iron piers. I was two-thirds of the way down from the point to the piers. I looked at her with the glass and see her scows were loaded. After I had sighted her first I looked again and saw she was light. Mr. Fremont called my attention and asked me if the Wise's scows were not light. It was a good, clear day. You could see her with your naked eye. I did not have to take the glass to see. I was instructed to hook the boat up and to proceed down to the tug Wise. When the lieutenant called my attention to the fact that the scows were apparently light I hooked up the boat. I looked at them. I saw they were light. That is the first thing that called my attention to the fact that they were light. I put the glass on them, but you could see it with the naked eye. I did not hear the tug whistle. I did not hear

her give any signal at all. I could not say whether she did whistle or not. If she had whistled I might and might not have heard it. If I had been as near as I say I would not necessarily have heard it. If she had blown four or five short, quick blasts I don't think I would. I don't think I would have seen the steam escaping from her whistle pipe. Sometimes the steam is dry and sometimes it is not.

Q. How long after you sighted the scows, as you say, light was it before you came up to them?

A. I was probably a half an hour or twenty-five minutes, I should say; somewhere in that neighborhood. After I saw the scows light I came up. I got the order to hook up the boat. I did not
63 see the scows lighting. I did not see them dump at all. I saw them loaded and I saw them light.

By Mr. MACFARLANE:

It takes about a minute or two to dump these scows. I would have to keep my eyes on him all the while. The tide was low-water slack.

Q. Looking at the east channel as marking the entrance on this chart (chart shown) when, as you testified, these scows were lighted, how could that tug Wise with those scows have to go to get the benefit of the flood tide going home?

A. On the lower side of the bay.

By Mr. WRAY:

Q. Would she at any stage of the tide?

A. No, sir.

By the COURT:

Q. How do you know that?

A. She would have to go out the east way, go around the Mud buoy, to get the first part of the flood.

By Mr. WRAY:

Q. Is there any other way for her to go?

A. Yes; she can go the way she went out.

Q. That is a little further?

A. Yes, sir.

By Mr. MACFARLANE:

Q. If she had started to go back the way she went out at that state of the tide, would she have had the tide against her?

A. Yes; all the way up the east channel and through the bay.

By Mr. WRAY:

Q. Have you seen them go out through the east channel?

A. Yes; we have different boats go that way.

Q. Which is their usual course going back?

A. They come around into the Coney Island channel.

Q. Always go around the Mud-buoy?

A. Not always; some turn around. Certain tugs go that way.
Q. What tugs?
A. Tug B.
Q. Who owns it?
A. The Atlantic Dredging Company, I think.
64 Q. How many times have you seen that tug go around that way?
A. I have seen her twice.
Q. In all the time you have been down there?
A. You asked me how many times she has gone that way. I said twice. Sometimes she goes the other way.
Q. In all the time you have seen her going down and have seen her coming back you only saw her go that way twice?
A. I can swear to twice. I am just swearing to that. You asked me how many times.
Q. You say that they can dump one of these barges in a minute or two?
A. From that to thirty minutes. I have seen them all times. I have seen them take two hours; some of them.
Q. As a matter of fact, they don't generally discharge in a minute?
A. If they have a good load they will get out as quick as that.
Q. Don't they more frequently take a longer time than that to dump?
A. The majority dump very quick.
Q. Don't they, as a rule, wash the dirt out?
A. No, sir.
Q. Haven't you seen them let the doors down with the dirt going through and allowing the water to come in?
A. No, sir.
Q. They don't do that at all?
A. No, sir; the door drops right out.

RICHARD VANDECAR recalled.

By Mr. MACFARLANE:

The writing in that stamp on the permit, Exhibit 1, is mine; it indicates that that was picked up at 9.35. The boat was
65 passing out. I took the permit up as I was coming in. The other hour indicates the turning-in point, inside of Coney island; at 1.35 she was inside Coney Island point. The red-ink memorandum is mine.

By Mr. WRAY:

Q. Was that made at the time?
A. It was made just as quick as I got a chance to make it.
Q. When was that?
A. I did not sign the permit until that night. I made it just before I signed it.

By a JUROR:

Q. Could that tow go down in that time and come back?
A. Yes; easy, four hours, you know.

By Mr. WRAY:

Q. What does that mark mean (indicating)?
A. That means the time the permit was took up. I was on the Argus. When I took up that permit I was at the wheel. The Argus was bound up for New York. She was, I think, at the upper end of the Narrows. I won't be positive. I could not swear positively. It was somewhere—I went alongside the tug at that time. I got the permit from them at that time. When she came back I did not take up the permit on my return trip; I had it. I am sure I got it from him on the trip when she was going out. I think it was somewheres in the upper part of the Narrows. I won't swear positive to the exact location. I did not put this time down until we got straightened up the river, because I can't let go of the wheel, you know.

The Government rests.

Mr. Wray moves the court to direct a verdict for the defendant on the testimony offered. Motion denied. Exception by the defendant.

Mr. Wray opened the case on behalf of the defendant.

MICHAEL F. O'SHAUGHNESSEY sworn and examined as a
66 witness on behalf of the defendant.

By Mr. WRAY:

I am deputy United States inspector and pilot on the patrol-boat Argus. I was on board of the Argus on the first day of May, 1894. I was in the pilot-house during that day when Lieutenant Fremont was on board.

Q. Did you take up the permit or have anything to do with the permit of the P. H. Wise that day?

A. Nothing, only to mark the time going in. I did not see the P. H. Wise going out that day, the first of May. I was on board of the Argus when the Argus came up with the P. H. Wise. It was somewhere in the neighborhood of the dumping ground. I was at the wheel in the pilot-house at the time. The scows were light when I got there. They were not loaded at the time I came up alongside.

Q. Do you know when they were dumped that day?

A. I don't know the exact time they were dumped that day. They were up close to the Mud buoy when I saw them. I don't know when they were dumped. When I first saw them they were at the upper end of the east channel. We were drifting between the iron pier and the bell buoy, following another scow in tow, keeping watch over the harbor for vessels of that kind. I saw the P. H. Wise while her scows were loaded. The last time I saw them

loaded she was about the east entrance of the east channel. I did not notice her after that until I came alongside of her. When I came up alongside of them they were about a mile to a mile and a half below the buoy. They were way inside of the buoy when we got to them. When I came alongside some conversation oc-
67 curred between Lieutenant Fremont and the captain. They were inside the buoy and light then. They were not down a mile or a mile and a half below the Mud buoy at that time; that was not when I saw them light. My attention was called to them.

By the COURT:

Q. By whom?

A. By Mr. Fremont sending the cook, asking me to go up to the Wise and then when we were just about abreast of the scows. We were inside the Mud buoy at that time.

Q. How far from the Mud buoy?

A. I should judge about a quarter of a mile.

Q. Which way from the buoy?

A. This way—coming home.

By a JUROR:

Q. Were you in the limits of the dumping ground?

A. Yes, sir—that is, I judged it to be around that neighborhood.

By Mr. WRAY:

I have been on vessels around that part of the harbor as inspection officer nine years.

Cross-examination by Mr. MACFARLANE:

I was mate and pilot and inspector on the Argus in May. I went to dinner on the first of May about twelve o'clock. The cook came and called me up. I was in bed. The Wise with this tow when I went to dinner was in the east channel when I first saw her. The cook called my attention and asked—I looked at them—at the scows—not with a glass. I didn't have any. They were loaded then. I didn't go to my dinner right away. I don't know the exact time I did go to dinner. It was between twelve and one o'clock. I did not go to dinner before I steered up to the Wise.

Q. Your tug had gone up to the Wise—you had gone close
68 to her and you found her light before you went to your dinner?

A. No; I don't mean to say so. I said "when I was called to my dinner." I did not go to my dinner then. It was after dinner when I took the wheel and was told to steer up to the Wise. Mr. Fremont sent the cook to me to tell me to steer up to the Wise, or something to that effect. I had not gone to my dinner before that. That was before I had gone to my dinner. While we were going to the Wise I was relieved by Captain Vandecar. I was eating my dinner when she got to the Wise. I was eating my dinner probably two or three minutes or five minutes. I didn't go on

deck. We were on a level with the deck. I saw her while I was eating. I eat my dinner aft the pilot-house on a level with the main deck. Lieutenant Fremont did not first call my attention to that tow at any time that morning. He told the cook. Lieutenant Fremont did not personally speak to me about it. When I first saw the Wise she was loaded and in the east channel. We were between the iron pier and the bell buoy. I was sitting in the engine-room doorway on deck. I first saw that those scows were light when we got up to the buoy after we steamed down where they were. I did not notice it until we steamed down. I cannot tell this jury just where this exact location is where they were discharged. I don't know how long before we reached the Wise they had been discharged. I remember the conversation. When the Argus went down to the Wise, Mr. Fremont asked the mate what made him dump in the east channel. The mate said he
69 didn't. Mr. Fremont said, "Where is the captain?" He says, "He is in bed." Mr. Freemont says, "Call him up." When he came up Mr. Fremont asked him why he dumped there. He said, "Mr. Delehanty, our hawser parted and we had to do it."

Q. Did you hear him say, "Mr. Delehanty, we had to do it; our lines parted"?

A. He said, "Our lines parted, Mr. Delehanty." Mr. Delehanty wasn't there at all. I don't recall any conversation with Mr. Fremont about the dumping of the Wise on that day after May 1st. Let me see; I think I did. He was up in the office. I think he showed me the chart. No; it was not on that occasion. No; I don't believe I had any conversation with him about it. I don't remember having any conversation with him at all. On August 15th I was on the Nimrod; the same position. * * * On May 1st, when the Argus steamed up to the P. H. Wise and Lieutenant Fremont had a conversation with these officers on the tug, she was inside the Mud buoy; this side of it, the north side of it, on her way home. She had gone out to the Mud buoy, passed around it, and was on her way home. I heard Lieutenant Fremont's testimony here yesterday. I heard Captain Vandecar testify. I heard him testify that that tow, when they steamed up to her, was on her way to the Mud buoy and from three-quarters of a mile to a mile from the Mud buoy. I do not say they do not testify to the truth. I said they were inside the Mud buoy when I saw them light again. I say that we got to the Wise when I was eating my dinner, and looking out through the door I saw that the Wise had passed the Mud
70 buoy and was on her way home.

By the COURT:

Q. When Fremont spoke and called the captain?
A. Fremont didn't call the captain.
Q. No; when the captain spoke to the mate.
A. Vandecar was in charge then.
Q. You heard that conversation?
A. I heard that conversation.

Q. Don't you know where you were?
A. We were about the buoy.
Q. You were above or below it?
A. A little this side, between that and the iron pier.

By Mr. MacFarlane:

Q. This was the Argus?
A. The Wise was right alongside of us. At that time she had passed the Mud buoy and was on her way home. I have not heard read the memorandum written on the permit made at that time.
Q. Let me read this to you: "This tow dumped her scows about two and a half miles southward of the Mud buoy in the neighborhood of the entrance to the east channel; went alongside the tug Wise, three-quarters of a mile to a mile below the Mud buoy. Scows all light." Is that true?
A. No; it is not true. We were at the Mud buoy.
Q. Captain Vandecar testified to an untruth when he testified?
A. I don't know whether he did or not. We were about abreast of the buoy.
Q. You say that memorandum made by Captain Vandecar is false?
A. I don't know that it is. I made a mistake about being at the buoy. We were at the second tavern-house south of the Coney Island pier.

71 By the Court:

Q. That was between the buoy and the Coney Island pier?
A. That is the second tavern-house on the beach. We were about abreast of it.
Q. You took a range at the time?
A. Yes, sir.
—. What was the range?
A. Second tavern-house on the beach.
Q. Was that abreast of you?
A. That was abreast of us.
Q. And they were abreast of you?
A. Yes, sir.
Q. Which way were you heading then?
A. Down.
Q. They were heading how?
A. This way.
Q. You mean towards New York?
A. Yes, sir.
Q. On August 18th and on the morning of the 19th you still were mate of the Nimrod?
A. Yes, sir. * * *

By the Court:

I am one of the deputy inspectors and pilot appointed by Mr. Delehanty. He has charge of this dumping in the Lower bay. My duties are to make arrests if we catch anybody dumping illegally.

I have been an inspector a year. I am a pilot and mate—that is, one appointed by Mr. Delehanty. I acted as both. I am mate and an inspector, that is all. I have been a mate just the same length of time I have been an inspector. Mr. Delehanty appointed me inspector. My business before that was steamboating, in capacity of captain of the Tillie Ray. Her business is towing. I have been captain of another boat, the —. She towed garbage to sea. I have been towing garbage to sea off and on for three years. Before that I was steamboat cook and deck hand in the same general
72 towing business. Before that I don't know what boat I was on. I was on several, cooking; boats doing a general towing. I have seen barges dumped in the Lower bay since I have been an inspector; I should judge it was from thirty to fifty. They go down in the morning on every ebb, not towing garbage. Garbage goes on the flood. Mud scows go on the ebb, garbage goes on the flood. They sometimes dump outside. I have reported one case of illegal dumping in the Lower bay. That was Franklin Brown. I don't know the date.

By Mr. MACFARLANE:

I was here all day yesterday. I came just when court opened at eleven o'clock. I stayed in court until court closed. I was in the hall some of the time. I was subpœnaed last night. Mr. Fremont told me to come here yesterday by your request. I did not have any conversation with you, but you told me—you told me to come to this court here. Mr. Fremont gave me a letter to send to the district attorney's office.

Recess.

JOHN ANSBRO, defendant, being duly sworn, testified as follows:

By Mr. WRAY:

I am a steamboatman. On the first day of May, 1894, I was captain of the P. H. Wise. I towed some mud scows out to sea on that day. I got them at Bay Ridge. They were loaded with mud, dredgings. I left Bay Ridge twenty-five minutes before — in the morning. I went from there to the dumping ground. I went up by way of the east channel. My permit was not taken up by the supervisor's patrol-boat in going out. I did not see the
73 patrol-boat when I went out.

By the COURT:

Q. This was on May 1st?
A. May 1st.

By Mr. WRAY:

After I passed out through the Narrows I went down on the southerly course until I made the entrance to the east channel. My permit was taken up that day when I came in; not when I went out. When I started out I went down the east channel, around the buoy on the east bank, to the Mud buoy. There is

a red buoy at the end of the east bank. The course from the Narrows down is about south, either half west or half east, according as the wind is to the eastward or to the westward, allowing for leeway. I came down to the entrance buoy. The course from there is south-southeast, through a certain part of the channel to the middle black buoy, and then I hold from there about southeast by east; that brings me down by the last black buoy, and then I hold from there about east by north, and then I make for the Mud buoy.

By the COURT:

Q. How far are you from the Mud buoy when you turn?

A. 1 mile and a half; about a mile and a quarter when I turn directly for the Mud buoy on a straight course.

By Mr. WRAY:

That is, not when you turn from the black buoy it is a continual turn. I kept turning from the eastern course; then I come up with the buoy after I get deeper water; that is the course I sailed on the first day of May and is the course I always sail. I go out the east channel night and day continuously, and I have been
74 for eight or nine years. On the first day of May I dumped at the Mud buoy, within the limits of the buoy that is specified on the chart. I should judge it was within a half a mile; I thought it was—between a line drawn through the buoy running north and another line drawn through the buoy running east. In the daytime I very often go down the Coney Island channel. It is a little further, I think, to go the east channel—half an hour or something like that. It is a safer channel to go through the east channel, and deeper water. When I got to the Mud buoy and discharged the cargoes of the scows I came in towards Coney Island pier and back home that way, through the Coney Island channel. I met the patrol-boat on the first day of May at the buoy when she came alongside of it. She came up alongside of me at the buoy; then they took the permit. They had not taken it up before that time. Lieutenant Fremont came alongside and he says, "Captain, you dumped too far down." I said I did not think so. I said, "I am within the limits of the buoy." I said, "To the best of my belief I am near enough to the buoy to be in the proper place." I believed that I was near enough to it to be in the proper place. The P. H. Wise is a good boat; she has a fore and aft compound engine, and she is allowed 110 pounds of steam; she is one of the best boats. There are others larger, but this boat usually will do as well; she carries more steam and will work up quicker power. I did not have any difficulty in towing the scows on that day. I had in tow on that day—the first of May—two scows, I think. They
75 were both loaded. They were scows that I had been towing right along. I have had larger tows than this with the P. H. Wise. Four is the highest I ever had with her. They will tow almost as easy as two if you keep them close together. The suction of one will drag the other after it. They are built in that shape. I think the Wise

will make twelve knots an hour easy enough going light. Towing two loaded scows, four or five miles an hour with an ebb tide, you know. That is the way we go out. On this day in question, on the first day of May, I passed over exactly the same route that I at any time took and dumped there going out by the east channel.

Cross-examination by Mr. MacFarlane:

On the first of May when my tug was overhauled by the Argus he came alongside of me and he said, "Captain, you have dumped too far down." Says I, "No; I don't think I have. I think I have dumped in the proper place." I mentioned something about the rope pulling these scows. Says I, "It is not necessary for me to pull any further to dump this mud and take the chance of breaking my rope on the scows." When the Argus overhauled the tug I was in the pilot-house. I slept in the pilot-house, but I was not asleep at that time. I was called out. I was reading a paper on the locker. I saw the Argus long before she came up. The mate, my pilot, called me when the Argus came up. I heard what the mate's conversation was with Lieutenant Fremont. I think he asked the mate—he told the mate he was dumping inside. He said, "No; he didn't." He says, "Call the captain."

76 Q. How far away from you was he?
A. As far as from here to the railing.

Charles Edward Eckhoff sworn and examined as a witness on behalf of the defendant.

By Mr. Wray:

On the first day of May, 1894, I was second deck hand on the P. H. Wise. I went with her when she towed out some scows to sea on that day. We went down the east channel. The tug and scows when they were dumped were about a quarter or half a mile inside the limits. They were inside the limits. The limits are half a mile south and east of the buoy. We dumped inside of those limits.

Defendant rests.

Rebuttal.

Lieutenant John C. Fremont recalled and examined on behalf of the Government.

By Mr. MacFarlane:

On May first when I overhauled the Wise I had a conversation with O'Shaughnessey, the witness who has testified here, the first witness for the defense. After leaving the buoy and running in and then down again I went into the pilot-house and spoke to Captain O'Shaughnessey and said, "Did you notice that the scows were empty?" and as he did not remember having seen the emptying of the scows in the east channel, I called his attention particularly to the fact that we first saw them empty and stated the distance at

which I thought they were south of the Mud buoy, and he assented to my statement. I stated in the conversation three-quarters of a mile to one mile south of the Mud buoy. He assented. I
77 understood him to agree to what I said. He made no remark contradicting me. Just what the conversation was I don't remember. I had a conversation with him when we had the chart, in which the chart was used. I used the chart. It was at my office, and I talked the matter over with him with the chart.

By Mr. MacFarlane:

I was anxious to find evidence for the prosecution in this case. Captain O'Shaughnessey was the mate of the Argus—the mate of the Government boat.

By Mr. Wray:

Q. What was that last remark? Something about getting evidence?

A. My idea was to see what evidence I would have to bring forward. I have had instructions concerning this case. I got them from the supervisor. He told me to take charge of it, as I was to be a witness and had to go up and see the district attorney.

By a Juror:

Q. Why did O'Shaughnessey leave the Argus?

A. He was transferred to the other boat.

Q. Why?

A. The mate that we had on the Nimrod was a small man, and that made trouble, and O'Shaughnessey is a big man and we transferred him.

Captain Richard H. Vandercar recalled and examined on behalf of the Government.

By Mr. MacFarlane:

I was on good terms with O'Shaughnessey. He left us good friends. He had no reason to contradict my testimony. I never had any quarrel with him.

Richard H. Vandercar recalled and examined on behalf of the Government.

By Mr. MacFarlane:

Exhibit 1 exhibited to witness.

78 The permit shows and the statement read in evidence shows she passed out nine thirty-five. This book (shown witness) is the log of the weather and the number of permits we took up. It is the log book copied on a blank at the main office. We do that from breakfast hour until dinner time. I think I made an entry on May 1st of the hour I took up that permit. I can point it out. The figures on the side of the log here, 1, 6, 10, 12, are hours. Between eight and ten refers to permits between eight and ten o'clock

in the morning. The number of this permit is 6546. I find an entry of the time that permit was taken up. It was just before ten. It is that in my handwriting.

By a JUROR:

Q. How long after you take it up do you make those?
A. Just as quick as I turn the boat up.
Q. How long after you took the permit did you make the entry?
A. Probably five or six or ten minutes. We turned the boat ahead. It was in daylight. Sometimes when it is dark we have to wait, because we cannot have a light in the pilot-house, but generally immediately after we take the permits up.

By Mr. WRAY:

Q. Did you take all these permits that are mentioned there yourself—four or five separate permits?
A. Well, between eight and ten.
Q. Between the hours of eight and ten you took up all those?
A. No, sir; I commenced right there; that one. I think that was taken up before eight o'clock. I won't be positive. I know we took up the permits. That is what we did. I think it was done a little before eight. I took up those five permits between the
79 hours of eight and ten, according to that. I don't remember speaking the tug and taking up the permit. I don't remember the speaking, but I remember going alongside and getting it. I think there was a deck hand with me in the pilot-house at the time. I think he took it. I don't know whether he took it or not. I don't know but the fireman took it. I don't know who picked it up. I know it was taken up. I am sure this occurred as they were going down. I remember it distinctly. When we took it up we were, I think, a little above the Narrows. I am positive; a little above the Narrows. I would swear it was above the Narrows. I do not remember taking up these others. Nothing more than I would remember this. I do not know what tug the 6530 permit was for.

By Mr. MACFARLANE:

There was nothing uncommon in taking up that number of permits in two hours, five or six. I have taken up ten or fifteen.

By Mr. WRAY:

I was on the Argus at the time this was taken up. I was on the Argus when they went out to the Mud buoy. I heard the defendant testify that at the time the Argus went alongside the tug down at the buoy, when an alleged conversation took place, that then the permit was taken up. I deny it most assuredly. No permit was taken up at that time. I had the permit on board. I remember the occasion distinctly. It was on my way up.

By Mr. MacFarlane:

Q. Did you go close enough to the Wise to take up a permit at the Mud buoy?

A. We were a little ways off from her. I don't know the distance. I don't know

80 CHARLES EDWARD ECKHOFF recalled and examined as a witness on behalf of the defendant.

By Mr. WRAY:

The permit was taken up outside by the Mud buoy. I handed it myself to one of the men with a stick. It was the deck hand; either the deck hand or the cook. I handed it to him on the end of the stick at the Mud buoy when he came alongside.

By a JUROR:

Q. When was this?

A. May 1st.

Lieutenant JOHN C. FREMONT recalled and examined on behalf of the Government.

By Mr. MacFarlane:

When I came alongside the Wise on that day I was in the gangway of the Argus. I don't remember seeing any permit handed over. I don't remember seeing it. We were not even within reaching distance.

By Mr. WRAY:

I could not help seeing it had it occurred, because the boat was small and I was in the gangway. I don't remember anything of it.

Q. Did you have the permit at the time you went down to the Wise?

A. I did not hear anything about the permit until——

Q. (Interrupting.) You don't know whether it was or not. If it had been taken up before that, you would have known it?

A. No.

Q. You don't know whether it was on the tug, then, or not?

A. No, sir.

Q. So you cannot say positively it did not occur at the dumping ground?

A. I can positively, for we were not within reaching distance of that tug.

Mr. WRAY: That is our case. I will ask that the Gov-
81 ernment be required to elect as to the several counts upon which they intend to go to the jury.

The COURT: I will not compel them. (To the district attorney:) Do you wish to elect?

Mr. MacFarlane: There are only three offenses charged and I do not wish to.

Mr. WRAY: I renew my motion to direct a verdict for the defendant as to each case.

Motion denied. Exception by defendant.

Mr. WRAY: Will your honor give me an exception to your ruling on the question of not compelling the district attorney to elect?

The COURT: Yes.

Mr. Wray addressed the jury on behalf of the defendant.

Adjourned.

Trial resumed Thursday, October 25th, 1894.

Mr. Macfarlane addressed the jury on behalf of the Government.

The district attorney announced that he abandoned the first, third, and fifth counts of each indictment.

Charge.

BENEDICT, *J.*:

GENTLEMEN OF THE JURY: The statute under which the accused is indicted is a very important statute. It was passed to protect the channels and the water in the lower part of the bay of our harbor.

Upon the condition of those channels the prosperity of this
82 city depends. Fill up those channels and there would be no New York. It might be Albany or some other place, but there would be no New York as we know it. The channels to the ocean, to the high seas, must be kept open if you wish to maintain the prosperity of this city. Great cities become great because they are accessible to the high seas, and if you are reading men you will have noticed how the importance of access to the sea increases.

We are here ten or fifteen miles from the high seas, and we have a splendid river whose waters flow through the Narrows into the channels below on which our ships reach the high seas. That channel fills up, and this statute was passed to prevent it being filled up by matter taken from this great city and dumped there. That statute has authorized a supervisor to lay out a place or places where refuse may be dumped, because there are some places where it may be advantageous to dump it. The regulations of the supervisor provide that all refuse of this kind, mud, not garbage, must be dumped within the quadrangle which has been pointed out to you on the chart.

The point has been taken in this case that when the regulation says half a mile from a particular place and refers to no buoy or anything of that kind to indicate the exact place it does not describe the locality. There may be something in that point, although I hardly think so. The regulation seems sufficiently plain for those who go to sea when it says "within a space south and east half a mile from the Mud buoy." That, in my opinion, is a sufficient description of the place. If anybody undertakes to dump mud
83 down there he must know whereabouts to dump and must be sure to know he is within the authorized limits when he dumps.

This is a penal offense. As to the punishment which is to be inflicted here, you have nothing to do. The responsibility for the punishment is upon me. You do wrong to the Government, to the community, and to ourselves if you decide this case on the question how much the man is going to be punished. Your duty is simply to determine the facts, to say whether this charge is true. If it is true, you should convict him; if it is not, then you should acquit him.

There are three charges in this indictment, charging three separate offenses. They must be kept distinct and you must find a verdict on each one of them. On No. 1, which refers to the east channel, the offense of the first of May, you may find him guilty or not guilty. On No. 2, which refers to the Coney Island channel, you may find him guilty or not guilty, and on No. 3, which refers to the east channel again, you may find him guilty or not guilty. I shall ask you when you come in, "What is your verdict upon each one of these counts?" and you must give it as you find it in respect to each. So I will consider the charges separately and you must consider them separately when you deliberate.

I take up the first. There the defendant is charged with being in command of these lighters, and that he did not go out to the dumping ground, but that he dumped the mud in the east
84 channel. If he did dump it in the east channel, then he is guilty, because the east channel, as proved by the chart, is two and one half miles away from the Mud buoy and there is no opportunity for mistake as to the location. Either he was in the east channel or he was not. If he was in the east channel when the dumping took place he violated this law and he is guilty. If he was not in the east channel when he dumped, he is not guilty and should be acquitted.

There is a conflict of testimony. Lieutenant Fremont and Captain Vandercar tell you what they saw, and, on the other side, the defendant himself swears and denies what they say. He has the right to go on the stand and deny it. They say they looked at him through the glass and that he was out in the east channel, and that after the scows were dumped they were still in the east channel. He says he was up to the buoy and he was not in the east channel when they dumped. How shall you determine the truth between these two statements? Look at the men; look at the probabilities of their being biased, whether these men, Fremont and Vandercar, have such a bias or have any reason for telling an untruth here, for it comes very close to that. Are they lying here in order to get this man in prison? There is no chance for a mistake, it seems to me. You are to determine whether they have done that thing. Such things have been done in courts of justice and they have been done here. That is for you to determine.

You saw the defendant. He is an intelligent man and knows what he is about. He says, "I commanded this boat; I dumped the refuse and I was up to the buoy and I was not in the
85 east channel at all." You heard his testimony, and by his appearance, his manner, and position in this case you must

judge it. Of course, the defendant is under a great stress. He has a right to be examined and he has a right to give his testimony. The jury must consider his testimony; they must weigh it with regard to his position and say whether they believe him or believe the others. Whether you believe him or not, you must determine. I do not give you any aid.

There is also the testimony of the mate, which you heard. Look at that man's manner. He was on the Government boat and what he swears to you will recollect very well. See whether that man's statements are to be believed, whether you think his testimony outweighs the testimony brought by the Government. If it does, in your judgment, then you should acquit this man. If it does not, you should convict him.

There are some incidental matters which, perhaps, throw some light upon this case. During the day, when Fremont came alongside this tow, Fremont says and Vandercar also says that when the defendant dumped he was outside of the limits three-quarters of a mile, and that they spoke to the man at the wheel and asked him, "What did you dump short for?" He said, "I did not have anything to do with it. The captain did it." Fremont said, "Call the captain." They called the captain and he came up and said, "I parted the hawser and had to dump, Mr. Delehanty." Fremont and the other man who was there say that point was three-quarters of a mile below the buoy. Fremont says that he stood in
86 the gangway—I think he said the gangway—and talked with this captain when he came out partially undressed. I think he had his coat off at the time. Fremont also says that the vessels were not near enough to pass anything to him and did not go near enough for him to pass anything to them. O'Shaughnessey says that he was eating his breakfast or his dinner; that he was in there and looked when they were right alongside, and they were up then this side of the buoy when they were spoken, and that the permit was passed from one vessel to the other when the permit was taken up. If O'Shaughnessey swears falsely, then you have a right to set aside everything he says, because the rule is, "False in one thing, false in all."

The question to be decided by you is whether or not you believe Fremont and Vandercar when they say that this dumping was done in the east channel, or whether you believe this defendant here who swears it was not in the east channel, but was close up to the Mud buoy where this dumping took place.

The second offense is alleged to have occurred on the 15th of August. Having disposed of the first count, you will take up the count of August 15th. That differs a little from the first one. The charge there is that the boats dumped in the Coney Island channel going out. Boats go out through the Coney Island channel, go around the buoy into the proper place, dump there, turn, and come back. The testimony of the man who was on board the vessel and at the wheel at the time is that they dumped in the Coney Island channel and did not go out to the buoy at all; that they dumped there, turned around, and came back.

87 The defendant denies that. He swears he went out and dumped within that quadrant and then turned and came back. There again is a question for you to determine. You saw the man, you heard his testimony, and *put* must say whether there is motive enough here to induce him to tell a falsehood.

O'Shaughnessey was called. I think he says that he went out there. On cross-examination it appears that he saw them down in the Coney Island channel, just at the end of it, and that they were then going out; that he went around the Hook and when he came back they were well on their way back. You, perhaps, may have understood him. He inferred from the time he was gone that they must have gone out to the Mud buoy and did go out to the Mud buoy, but he does not say that. He does not say he saw where they did dump. That is the case on August 15th. The testimony of that man is to be considered by you.

The third offense is the one of August 18th. That was in the east channel between the second and third buoys. The witness there is the same witness who was at the wheel. He says that he dumped there and as against that the captain said that he did not dump there. It appears this man had had an altercation with the captain, and that he may have some feeling against him. How much feeling he shows and how much bias he has are things for you to consider, but there is the same question of fact, which do you believe, the man at the wheel who says that he knows that they dumped in the east channel or the captain who says, "I did not dump in the east channel."

88 I suppose you remember the location of the east channel. Boats go down and turn at the end of the east channel at what is called the entrance and then come up, and I suppose, although there is no evidence of it, we may say that the reason why they do not dump at the required place is because they gain time by dumping short, as they call it—that is to say, the men who dump this mud in the proper place have to travel a greater distance than do the men who do not care where the refuse goes. That is a thing to be considered by the jury. If a man dumps just as he goes into the Coney Island channel it is perfectly easy for him to know where that is. The proof, then, is that the boats go right out to the buoy; that they can locate it easily; that there is no difficulty in getting there, and that there is no chance of making a mistake; that every man knows when he is at the east buoy or when he is in the east channel.

The case is an important one because if this law is not strong enough, then there must be another one stronger. At any rate, the Lower bay must be protected. It is a vast business. I refer to the transferring of this refuse. The damage done there is immense. I do not mean by that remark to tell you you should convict this man. You cannot convict him unless you are satisfied beyond a reasonable doubt that he was in the east channel on two of the occasions and on the other in the Coney Island channel when he dumped. If you are not so satisfied you must acquit him.

Mr. WRAY: I desire to take a few exceptions to the charge
89 of your honor: First, the charge that the supervisor had prescribed the limits as provided by the statute, and I except also to the charge that the defendant dumped in the east channel because he was in the east channel.

The COURT: I did not charge that. I leave that to the jury.

Mr. WRAY: I understood the testimony to be he dumped outside of there and the scows were seen loaded in the east channel. I do not know that I understood your honor correctly, but in speaking of the instance of the 15th of August you referred to the man who was at the wheel as having testified. Anderson was not at the wheel on the 15th. He was below deck.

The COURT: Well, I will take that back, then. The jury can determine.

Mr. WRAY: I also desire to except to your honor's charge as to the supposition that time may be saved by dumping short when they take the tide and go by the ebb and flow exactly the same course they would have gone if they had not dumped short.

The COURT: I said time would be saved if they dumped in the Coney Island channel.

Mr. WRAY: Then I ask your honor to charge that the testimony of the crew of the tug was that they went out to the buoy.

The COURT: They did testify that.

Mr. WRAY: I ask your honor to charge the jury that unless they are satisfied beyond a reasonable doubt from the Govern-
90 ment's case as to each point in it, disregarding entirely the defense put in—if they are not entirely satisfied beyond a reasonable doubt from the Government's case that these offenses were committed by the defendant—they shall not consider the necessities of commerce which caused this law to be passed and should discharge the defendant.

The COURT: I charge that unless they are satisfied beyond a reasonable doubt from all the evidence they cannot convict him.

Mr. WRAY: I except to that and to so much of your honor's charges as defines a reasonable doubt.

The COURT: The jury are entitled to examine all the evidence and must be satisfied beyond a reasonable doubt of the truth of the charges.

The jury retired and subsequently rendered a verdict of guilty on the second count and not guilty on the fourth and sixth counts.

And forasmuch as the exceptions, matters, and things aforesaid would not otherwise appear by the record I have settled, allowed, and signed this bill of exceptions on the prayer of the said defendant, by his counsel, and it is—

Ordered that the same be filed as a part of the record herein with like force and effect as if the same had been reduced to writing and filed before the finding of the jury hereinabove set forth.

91 Witness my hand, at the city of New York, on the 29th day of January, 1895.

CHAS. L. BENEDICT.

(Endorsed:) U. S. circuit court, S. D. of N. Y. United States *vs.* John Ansbro. Bill of exceptions. Foley & Wray, attorneys for defendant, 63 Wall street, New York city. Service this day of a copy of the within is admitted. Dated N. Y., Jan'y 12, 1895. Wallace Macfarlane, U. S. att'y. U. S. circuit court. Filed Jan. 30, 1895. John A. Shields, clerk.

92 Ex. 1.

(Form D.) (Copy.)

War Department.

No. 6546.

Application for Permit.

NEW YORK CITY, *May* 1*st*, 1894.

To the supervisor of the harbor of New York.

SIR: The undersigned hereby applies for a permit, to be issued under the laws of the United States, for the steamer "P. H. Wise" or "J. [T.]* Easton," of [New York]*—master, J. Ansbro or J. Roberts; engineer, J. Floyd or J. Speckerman—to tow four [scows]* dumpers (names or numbers), 2, 18, 38, 45, containing respectively 305, 522, 529, 752 cubic yards of mud, from Bay Ridge channel, through the Narrows and Lower bay to the Mud buoy, and there deposit it.

The owners of the scows or dumpers are Morris & Cumings Dredging Co.

For whom material is transported: U. S. Govern't.

Very respectfully,

MORRIS & CUMINGS DREDGING CO.
H. H. PETZE.

Address: 22 State St., N. Y.

93 [Endorsed:] 37; 6546. E. H. Wise, Morris & Cummings M. Moran. Dumper short. May 1st.

[* Words enclosed in brackets erased in copy.]

94 (Form A.) (Copy.)

War Department.

No. 6546.

Permit.

Branch office, supervisor port of N. Y.; R. H. Vandercar, deputy inspector; May 1, 1894. Time passed out, 9.35 a. m.; time passed in, 1.35 p. m.

OFFICE OF THE SUPERVISOR OF THE HARBOR OF NEW YORK, *May 1st*, 1894.

Application for this permit having been made in due form, permission is hereby granted the steamer "P. H. Wise," of New York, [or J. T. Easton, of N. Y.]*—master, J. Ansbro [or J. Roberts];* engineer, J. Floyd [or J. Speckerman]*—to pass with two *four* dumpers, Nos. [2, 18,]* 38 and 45, containing [305, 522,]* 529 and 752 cu. yds. of mud, from Bay Ridge channel, through the Narrows and Lower bay, to the "Mud buoy," and there deposit it.

The location of the "Mud buoy" and the instructions will be found on this sheet.

This permit is good only for one trip for the steamer named herein, and for precisely the number and kind of vessels for which granted. It is not transferable, and the tow for which issued must proceed to its destination on the date mentioned unless otherwise stipulated.

This paper must accompany the tow and be delivered whenever and wherever demanded by the inspectors or their deputies who are duly accredited; in case it is not retained by them, it must be delivered to this office as soon as possible after the scows or dumpers are discharged.

D. DELEHANTY,
Lieutenant Commander U. S. Navy, Supervisor.

[Written across the face in red ink:] This tow dumped her scows about 2½ miles S. W. of Mud buoy, in neighborhood of entrance to east channel; went alongside of tug Wise ¾ mile below Mud buoy; scows all light. Time scows dumped, 12.40 p. m.

(S'g'd) R. H. VANDERCAR, *Dep. Inspt.*

[Stamped across the face in red ink:] Supervisor of the harbor of New York, May 5, 1894. Permit returned.

95 *Class A.*

The deposit of all dredgings, earth, sand, mud, cellar dirt, and other substances, not garbage, or mixed with garbage or other offensive material of any description, shall take place south and east and within half a mile of what is known as the "Mud buoy," which

[* Words and figures enclosed in brackets erased in copy.]

is a white spar buoy, one and a half miles south of Coney island, and located as follows:

Ranges. { North side Swinburne island and New Dorp beacon in range. / Romer beacon and Point Comfort beacon in range.

Bearings. { Centennial tower bearing N. N. W. / Romer beacon bearing S. W. by W. ¾ W. } Magnetic.

Every scow or dumper engaged in the transportation of any of the materials mentioned in this class is required to have its name or number painted with white letters at least 14 inches long on a black ground, and at all times exposed so as to be plainly legible from either end and from either side of the vessel, and will carry such signals as may be prescribed.

An act to prevent obstructive and injurious deposits within the harbor and adjacent waters of New York city by dumping or otherwise, and to punish and prevent such offences.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the placing, discharging, or depositing, by any process or in any manner of refuse, dirt, ashes, cinders, mud, sand, dredgings, sludge, acid, or any other matter of any kind, other than that flowing from streets, sewers, and passing therefrom in a liquid state, in the tidal waters of the harbor of New York, or its adjacent or tributary waters, or in those of Long Island sound, within the limits which shall be prescribed by the supervisor of the harbor, is hereby strictly forbidden, and every such act is made a misdemeanor, and every person engaged in or who shall aid, abet, authorize or instigate a violation of this section, shall, upon conviction, be punishable by fine or imprisonment, or both, such fine to be not less than two hundred and fifty dollars nor more than two thousand five hundred dollars, and the imprisonment to be not less than thirty days nor more than one year, either or both united, as the judge before whom conviction is obtained shall decide, one-half of said fine to be paid to the person or persons giving information which shall lead to conviction of this misdemeanor.

SEC. 2. That any and every master and engineer, or person or persons acting in such capacity, respectively on board of any boat or vessel who shall knowingly engage in towing any scow, boat, or vessel loaded with any such prohibited matter to any point or place of deposit, or discharge in the waters of the harbor of New York, or in its adjacent, or tributary waters, or in those of Long Island sound, or to any point or place elsewhere than within the limits defined and permitted by the supervisor of the harbor hereinafter mentioned, shall be deemed guilty of a violation of this act, and shall, upon conviction, be punishable as hereinbefore provided for offenses in violation of section one of this act, and shall also have his license revoked or suspended for a term to be fixed by the judge before whom tried and convicted.

SEC. 3. That in all cases of receiving on board of any scows or boats such forbidden matter or substance as herein described, it shall be the duty of the owner or master, or person acting in such capacity, on board of such scows or boats, before proceeding to take or tow the same to the place of deposit, to apply for and obtain from the supervisor of the harbor appointed hereunder a permit defining the precise limits within which the discharge of such scows or boats may be made; and any deviation from such dumping or discharging place specified in such permit shall be a misdemeanor within the meaning of this act; and the master and engineer, or person or persons acting in such capacity, on board of any towboat towing such scows or boats, shall be equally guilty of such offense with the master or person acting in the capacity of master of the scow, and be liable to equal punishment.

SEC. 4. That all mud, dirt, sand, dredgings, and material of every kind and description whatever taken, dredged, or excavated, from any slip, basin, or shoal in the harbor of New York, or the waters adjacent or tributary thereto, and placed on any boat, scow or vessel for the purpose of being taken or towed upon the waters of the harbor of New York to a place of deposit, shall be deposited and discharged at such place or within such limits as shall be defined and specified by the supervisor of the harbor, as in the third section of this act prescribed, and not otherwise. Every person, firm, or corporation being the owner of any slip, basin or shoal, from which such mud, dirt, sand, dredgings, and material shall be taken, dredged, or excavated, and every person, firm or corporation in any manner engaged in the work of dredging or excavating any such slip, basin, or shoal, or of removing such mud, dirt, sand, or dredgings therefrom, shall severally be responsible for the deposit and discharge of all such mud, dirt, sand, or dredgings at such place or within such limits so defined and prescribed by said supervisor of the harbor; and for every violation of the provisions of this section the person offending shall be guilty of an offense against this act, and shall be punished by a fine equal to the sum of five dollars for every cubic yard of mud, dirt, sand, dredgings, or material not deposited or discharged as required by this section. Any boat or vessel used or employed in violating any provision of this act, shall be liable to the pecuniary penalties imposed thereby, and may be proceeded against summarily by way of libel in any district court of the United States, having jurisdiction thereof

* * * * * * *

Approved June 29, 1888.

96 Ex. 2.

(Form A.) (Copy.)

Ex. 2.

War Department.

No. 1156. Point.

Permit.

Branch office, supervisor port of New York; Shaughnessy, deputy inspector; August 15, 1894. Time passed out, 1.25 p. m.; time passed in, 4.15 a. m. Fort.

OFFICE OF THE SUPERVISOR OF THE HARBOR OF NEW YORK, *August* 15, 1894.

Application for this permit having been made in due form, permission is hereby granted the steamer "Stephen Decatur," of N. Y.—master, John Ansbro; engineer, John Brittan—to pass with four dumpers, Nos. 4, 37, 39, and [42],* containing 387, 818, 548, and 736 cubic yards of mud, from Red Hook channel through the Narrows and Lower bay to the "Mud buoy," and there deposit it.

The location of the "Mud buoy" and the instructions will be found on this sheet.

This permit is issued in accordance with the certificate on the application that the vessels specified above contain no floatable material.

Under no circumstances will a permit be granted for the deposit of heavy floatable material, such as spiles, dock timbers, &c., in the waters under the jurisdiction of this office.

This permit is good only for one trip for the steamer named herein, and for precisely the number and kind of vessels for which granted. It is not transferable, and the tow for which issued must proceed to its destination on the date mentioned unless otherwise stipulated.

This paper must accompany the tow and be delivered whenever and wherever demanded by the inspectors or their deputies who are duly accredited; in case it is not retained by them, it must be delivered to this office as soon as possible after the scows or dumpers are discharged.

D. DELEHANTY,
Lieutenant Commander U. S. Navy, Supervisor.

[Written across the face in red ink:] One pocket in 43 light. Supervisor of the harbor of New York, Aug. 16, 1894. Permit returned.

[* Figures enclosed in brackets erased in copy.]

97 *Class A.*

The deposit of all dredgings, earth, sand, mud, cellar dirt, and other substances, not garbage, or mixed with garbage or other offensive material of any description, shall take place south and east and within half a mile of what is known as the "Mud buoy," which is a white spar buoy, one and half miles south of Coney island, and located as follows:

Ranges. { North side Swinburne island and New Dorp beacon in range.
Romer beacon and Point Comfort beacon in range.

Bearings. { Centennial tower bearing N. N. W. } Magnetic.
Romer beacon bearing S. W. by W. $\frac{3}{4}$ W. }

Every scow or dumper engaged in the transportation of any of the materials mentioned in this class is required to have its name or number painted with white letters at least 14 inches long on a black ground, and at all times exposed so as to be plainly legible from either end and from either side of the vessel, and will carry such signals as may be prescribed.

98 (Copy.) (Form D.)

War Department.

No. 1156.

Application for Permit.

NEW YORK CITY, *August* 15, 1894.

To the supervisor of the harbor of New York.

SIR: The undersigned hereby applies for a permit, to be issued under the laws of the United States, for the steamer S. Decatur, of N. Y.—master, John Ansbro; engineer, John Brittan—to tow 4 scows, dumpers (names or numbers), 4, 37, 39, 42, containing respectively 387, 818, 548, 736 cubic yards of mud, from Red Hook channel, through the Narrows and Lower bay to the Mud buoy, and there deposit it.

The owners of the dumpers are Morris & Cumings Dredging Co.

For whom material is transported: U. S. Government.

We certify that the contents of the above-mentioned scows or dumpers are entirely free from floatable matter.

Very respectfully,

MORRIS & CUMINGS DREDGING CO.
H. H. PETZE.

Address: 22 State St., N. Y.

99 [Endorsed:] 41½.

100 Ex. 3.

(Form A.) (Copy.)

Ex. 3.

War Department.

No. 1262. Point.

Permit.

Branch office, supervisor port of N. Y.; Shaughnessy, deputy inspector; Aug. 19, 1894. Time passed out, 1.20 a. m.; time passed in, 5.25 a. m. Point.

OFFICE OF THE SUPERVISOR OF THE HARBOR OF NEW YORK, *August* 18, 1894.

Application for this permit having been made in due form, permission is hereby granted the steamer "S. Decatur"—master, John Ansbro; engineer, Jas. Brittan—to pass with three dumpers [3, 40, 45],* containing [378, 709, 755]* cu. yds. mud, from Red Hook channel through the Narrows and Lower bay to the "Mud buoy," and there deposit it.

The location of the "Mud buoy" and the instructions will be found on this sheet.

This permit is issued in accordance with the certificate on the application that the vessels specified above contain no floatable material.

Under no circumstances will a permit be granted for the deposit of heavy floatable material, such as spiles, dock timbers, &c., in the waters under the jurisdiction of this office.

This permit is good only for one trip for the steamer named herein, and for precisely the number and kind of vessels for which granted. It is not transferable, and the tow for which issued must proceed to its destination on the date mentioned unless otherwise stipulated.

This paper must accompany the tow and be delivered whenever and wherever demanded by the inspectors or their deputies who are duly accredited; in case it is not retained by them, it must be delivered to this office as soon as possible after the scows or dumpers are discharged.

D. DELEHANTY,
Lieutenant Commander U. S. Navy, Supervisor.

[Written across the face in red ink:] 2, 37, 42. Supervisor of the harbor of New York, Aug. 20, 1894. Received.

101 [Endorsed:] 41. Stephen Decatur. Morris & Cummings. Reported by A. Anderson. August 15 & 18, 1894.

[* Figures enclosed in brackets erased in copy.]

Class A.

The deposit of all dredgings, earth, sand, mud, cellar dirt, and other substances, not garbage, or mixed with garbage or other offensive material of any description, shall take place south and east and within half a mile of what is known as the "Mud buoy," which is a white spar buoy, one and a half miles south of Coney island, and located as follows:

Ranges. { North side Swinburne island and New Dorp beacon in range. / Romer beacon and Point Comfort beacon in range.

Bearings. { Centennial tower bearing N. N. W. / Romer beacon bearing S. W. by W. $\frac{3}{4}$ W. } Magnetic.

Every scow or dumper engaged in the transportation of any of the materials mentioned in this class is required to have its name or number painted with white letters at least 14 inches long on a black ground, and at all times exposed so as to be plainly legible from either end and from either side of the vessel, and will carry such signals as may be prescribed.

102 (Copy.) (Form D.)

War Department.

No. 1262.

Application for Permit.

NEW YORK CITY, *August* 18, 1894.

To the supervisor of the harbor of New York.

SIR: The undersigned hereby applies for a permit, to be issued under the laws of the United States, for the steamer Stephen Decatur, of N. Y.—master, John Ansbro; engineer, James Brittan—to tow 3 scows, dumpers (names or numbers), 3, 40, 45, containing respectively 378, 709, 755 cubic yards of mud, from Red Hook channel through the Narrows and Lower bay to the Mud buoy, and there deposit it.

The owners of the dumpers are Morris & Cumings Dredging Co.

For whom material is transported: U. S. Government.

We certify that the contents of the above-mentioned scows or dumpers are entirely free from floatable matter.

Very respectfully,

MORRIS & CUMINGS DREDGING CO.
H. H. PETZE.

Address: 22 State St., N. Y.

103 [Endorsed:] 41½. Case Stephen Decatur dumping short Aug't 15th and 18th. Reported by A. Anderson, deck hand Stephen Decatur.

104 The Supreme Court of the United States.

THE UNITED STATES OF AMERICA
against
JOHN ANSBRO.

Assignment of Errors.

Afterwards, to wit, on the 14th day of March, in the year of our Lord one thousand eight hundred and ninety-five, at the October term for 1894 of the Supreme Court of the United States, at the Capitol, in the city of Washington and District of Columbia, comes the said John Ansbro, by Foley & Wray, his attorneys, and says that in the record and proceedings in the above-entitled cause there is manifest error in this, to wit:

I.

That the matters charged in the indictment do not constitute a crime by the common law or under any statute of the United States.

II.

That the matters charged in the second count of the indictment do not constitute a crime by the common law or under any statute of the United States.

III.

That the matters charged in the testimony or proceedings had upon the trial herein do not constitute a crime by the common law or under any statute of the United States.

105 IV.

That the alleged offense set forth in the second count of said indictment was committed, if at all, within the eastern district of New York, and that by the sixth amendment to the Constitution of the United States the said circuit court of the United States for the southern district of New York was without jurisdiction to try said John Ansbro upon said indictment or at all, and that such trial in said southern district of New York was unlawful and a violation of his constitutional rights.

V.

That said second count of said indictment does not allege that the supervisor of the harbor therein mentioned prescribed the limits within which the placing, discharging, or depositing the matter therein described was forbidden, as is required by the statute therein set forth, and such count is insufficient in law and does not set forth facts which constitute any offense against any statute or law.

VI.

That said second count of said indictment does not set forth the limits prescribed by said supervisor of the harbor within which the placing, discharging, or depositing of the matter therein described was forbidden, as is required by the statute therein set forth, and such count is insufficient in law and does not set forth facts which constitute any offense against any statute or law.

VII.

That said second count of said indictment does not set forth
106 the order of said supervisor of the harbor defining the precise limits within which the discharge of scows or boats therein mentioned might be made, and such count is insufficient in law and does not set forth facts which constitute any offense against any statute or law.

VIII.

That the indictment or the testimony and proceedings had on the trial herein do not show nor does any of them allege or show any fact constituting the offense against or violation of the statute by the defendant for the violation of which said John Ansbro has been convicted herein.

IX.

That the statute for a violation whereof John Ansbro is convicted is unconstitutional and void in that said statute purports to create more than one crime for the performance of the same act and provides that a person shall be twice placed in jeopardy for the same offense; in that said statute attempts to provide for the punishment of one person for the offense therein described when committed by another person; in that it attempts to provide for the deprivation of persons of their liberty or property without due process of law; in that said statute seeks to make the commission of an act which is lawful under the common law and, except for the provisions of said act, a crime punishable as therein provided, but without requiring reasonable safeguards to prevent the deprivation of the liberty or property of any person committing such otherwise lawful act without due process of law; in that said statute fails to require
the supervisor of the harbor therein named to place marks
107 or buoys at or upon or locate by range or bearings the limits therein provided for, without which a compliance with such statute is impossible; none of which is within the power of Congress.

X.

That the court erred in not quashing the indictment.

XI.

The court erred in not directing the jury to acquit the defendant upon the trial hereof at the close of the prosecution's case.

XII.

That the court erred in not directing the jury to acquit the defendant upon the trial hereof at the close of the whole case.

XIII.

That the court erred in charging the jury that the supervisor of the harbor has prescribed the limits within which the discharge of the aforesaid matter should be prohibited, and also the limits within which such passage should be allowed as in said statute provided.

XIV.

That the court erred in charging that the jury might suppose that time would be saved by the defendant in discharging such matter outside the limits provided therefor.

XV.

That the court erred in not charging the jury that unless they were satisfied beyond a reasonable doubt from the prosecution's case as to each point in it, disregarding entirely the defense put in, the offense charged in the indictment was committed by the de-
108 fendant, they should not consider the necessities of commerce which caused said statute to be passed, and should discharge the defendant.

XVI.

That the court erred in not dismissing the prosecution herein.

Wherefore said John Ansbro prays that the conviction of the circuit court of the United States for the southern district of New York be reversed and the prosecution herein dismissed.

JOHN F. FOLEY,
ALBERT A. WRAY,
Attorneys for Plaintiff in Error, 63 Wall St., N. Y. City.

(Endorsed:) Supreme Court of the U. S. The United States of America *vs.* John Ansbro. Assignment of errors. Foley & Wray, attorneys for pl'ff in error, 63 Wall street, New York city. U. S. circuit court. Filed Feb. 13, 1895. John A. Shields, clerk.

109 Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

THE UNITED STATES OF AMERICA
vs.
JOHN ANSBRO. } Bond for Damages and Costs.

Know all men by these presents that we, John Ansbro and James D. Leary, are held and firmly bound unto the above-named The United States of America in the sum of two hundred and fifty dollars, to be paid to the said The United States of America; for the

payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 29th day of December, in the year of our Lord one thousand eight hundred and ninety-four.

Whereas the above-named John Ansbro has prosecuted an appeal to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named John Ansbro shall prosecute said appeal to effect and answer all damages and costs if he fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

110 JOHN ANSBRO. [SEAL.]
JAMES D. LEARY.

Sealed and delivered and taken and acknowledged this 29th day of Dec'r, 1894, before me—

[SEAL.] FREDERICK G. WETTERAN,
Notary Public, Kings Co.

Certificate filed in New York Co.

UNITED STATES OF AMERICA, } ss.:
Southern District of New York, }

James D. Leary, being duly sworn, deposes and says that he is worth the sum of four hundred dollars over and above all his just debts and liabilities.

JAMES D. LEARY.

Sworn to this 29th day of Dec'r, A. D. 1894, before me—

[SEAL.] FREDERICK G. WETTERAN,
Notary Public, Kings Co.

Certificate filed in New York Co.

(Endorsed:) U. S. circuit court, southern district of New York. The United States of America *vs.* John Ansbro. Bond for damages and costs on appeal. Approved Feb. —, 1895. E. Henry Lacombe, U. S. circuit judge. U. S. circuit court. Filed Feb. 14, 1895. John A. Shields, clerk.

111 UNITED STATES OF AMERICA, } ss.:
Southern District of New York, }

Be it remembered that on this twenty-fifth day of October, one thousand eight hundred and ninety-four, before me, John A. Shields, clerk of the circuit court of the United States for the southern district of New York, personally came John Ansbro, of the city of New York, and James D. Leary, residing at No. 43 East 25th street, in the city of New York, and severally acknowledged themselves to owe to the United States of America—that is to say, the said John

Ansbro principal, in the sum of fifteen hundred dollars, and said James D. Leary, surety, in the sum of fifteen hundred dollars, separately to be levied and made of their respective goods and chattels, lands and tenements, to the use of the United States, if default be made in the condition following, to wit:

Whereas, on the twenty-fifth day of October, 1894, at a term of the circuit court of the United States held in and for the southern district of New York, the above-named John Ansbro was tried on an indictment charging him with a violation of the act of Congress passed June 29, 1888, entitled "An act to prevent obstructive and injurious deposits within the harbor and adjacent waters of New York city by dumping or otherwise, and to punish and prevent such offenses," and the jury having returned a verdict that on the 1st day of May, 1894, said John Ansbro did violate such law, and that he was guilty of the offense charged in the second
112 count of the indictment upon which said John Ansbro was tried; and

Whereas a motion was made in arrest of judgment upon such conviction, and the court having set such motion down for argument at a future day, and the said John Ansbro having been allowed to give bail in the sum of fifteen hundred dollars pending the determination of such motion and pending the determination of any writ of error which may be allowed from any judgment which may be rendered against said John Ansbro by reason of the said verdict and said conviction:

Now, therefore, the condition of this recognizance is that if upon the determination of said motion in arrest of judgment as aforesaid the said John Ansbro shall personally appear before such circuit court for sentence and judgment upon the second Wednesday of December, 1894, at 11 a. m., and, further, if any such writ of error shall issue herein as aforesaid, that said John Ansbro shall personally appear before such circuit court whenever and as soon as a judgment upon the mandate of the supreme court shall be entered in said circuit court, and then and there surrender himself on each such occasion, if said motion for arrest of judgment be denied, to the said marshal and abide the order of the said circuit and supreme courts if such writ of error issue or the order of said circuit court if *not* such writ of error shall issue, then this recognizance will be void; otherwise to remain in full force and virtue.

JOHN ANSBRO. [SEAL.]
JAMES D. LEARY. [SEAL.]

Acknowledged before me this 25th day of October, 1894.

JOHN A. SHIELDS,
Clerk U. S. Circuit Court, Southern District of New York, and U. S. Commissioner, S. D. N. Y.

113 SOUTHERN DISTRICT OF NEW YORK, *ss:*

James D. Leary, being duly sworn, says he resides at No. 43 East 25th street, in the city of New York, and that he is worth three

thousand dollars over and above all his just debts and liabilities, and that he is a freeholder.

JAMES D. LEARY.

Sworn to before me this 25th day of October, 1894.

JOHN A. SHIELDS,
Clerk U. S. Circuit Court, Southern District of New York, and U. S. Commissioner, S. D. N. Y.

(Endorsed:) Circuit court of the United States for the southern district of New York. The United States *vs.* John Ansbro. Recognizance, returnable the second Wednesday of December, 1894. U. S. circuit court. Filed Oct. 24, 1894. John A. Shields, clerk.

114 UNITED STATES OF AMERICA, *ss:*

To the United States of America, Greeting:

You are hereby cited and admonished to appear at the Supreme Court of the United States to be holden at Washington on the 14th day of March, 1895, pursuant to an appeal allowed, taken, and filed in the office of the clerk of the circuit court of the United States for the southern district of New York, wherein John Ansbro is appellant and The United States of America is respondent, to show cause, if any there be, why the judgment in the said appeal mentioned should not be corrected and speedy justice should not be done to the party in that behalf.

Dated Feb'y 14th, 1895.

E. HENRY LACOMBE,
U. S. Circuit Judge.

(Endorsed:) Supreme Court of U. S. United States of America *vs.* John Ansbro. Citation. Foley & Wray, attorneys for defendant, 63 Wall street, New York city. Service this day of a copy of the within is admitted. Dated N. Y., Feb. 15th, 1895. Wallace Macfarlane, U. S. attorney. U. S. circuit court. Filed Feb. 15, 1895. John A. Shields, clerk.

Endorsed on cover: Case No. 15,829. S. New York C. C. U. S. Term No., 558. John Ansbro, plaintiff in error, *vs.* The United States. Filed March 15th, 1895.